160 U.S. 379

TRANSCRIPT OF RECORD.

THE LAW ASSOCIATION OF PHILADELPHIA

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~377~~. 96

WILLIAM WALLACE KIRBY, APPELLANT,

vs.

MARIA E. TALLMADGE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MARCH 19, 1892.

(14,996.)

953 A

(14,996.)

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WILLIAM WALLACE KIRBY, APPELLANT,

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a *Record in the Case of Maria E. Tallmadge vs. William Wallace Kirby et al., from Supreme Court of the District of Columbia, 1892.*

1 *Original Bill. Filed Oct. 6, 1888.*

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WILLIAM WALLACE KIRBY, L. CABELL WILLIAMSON, Westel Willoughby, Elizabeth M. Houchens, Ella A. Goudy, and Richard Henry Miller.
No. 11382, Eq. Doc.

To the justice of the supreme court of the District of Columbia holding a special term as equity court for said District:

Complainant shows as follows:

1. That she is a resident of the District of Columbia and brings this suit in her own right; that the defendants are all residents of said District except, as she is informed and believes, Elizabeth M. Houchens, who resides at Warrenton, in the county of Fauquier, and State of Virginia, and Ella A. Goudy, a resident of the city of Baltimore and State of Maryland.

2. That heretofore on or about the 2nd day of September, 1882, complainant purchased two lots numbered 77 and 78, in subdivision of square 239, being on the north side of R street N. W. between 13th and 14th streets, in the city of Washington, and advanced the purchase-money for the same unto one John L. Miller, who took the title to himself by a deed in fee-simple, which was duly recorded in Liber 1015, fol. 418 *et seq.*, one of the land records of the District of Columbia, and it is prayed to be taken as a part hereof for greater certainty; and on the same day the said John L.
2 Miller executed five promissory notes, each for one thousand dollars, in part payment of the purchase-money, secured by a deed of trust by him and his wife upon the said pieces of ground, and duly recorded in Liber 1015, fol. 420 *et seq.*, one of the land records of the District, and it is prayed to be taken as a part hereof for greater certainty.

3. And subsequently and on or about the 29th of June, 1883, complainant did furnish the said Miller with money to purchase the next adjoining lot to the above-described pieces, being sublot 76, in said square 239, and took the deed to himself, which deed was recorded on the 30th day of November, 1883, in Liber 1063, fol. 197, and executed a deed of trust with his wife for deferred payments of $1,266, recorded in June 30th, 1883, in Liber 1048, fol. 161, and she prays leave to refer to said records and to read the same at the hearing of the cause for greater certainty.

4. That the said Miller had no right or interest in any of the above pieces or parcels of land and premises, but was simply a trustee for this complainant, and the whole of the purchase-money

was advanced by or for her and obtained by her in no way from (and not by gift or conveyance from) her husband; that complainant immediately upon the purchases entered into possession and control of the pieces of ground and premises, and has payed all taxes and charges and received all profits and occupied the house on a part of lots as her dwelling, and has paid all interest upon the notes for the deferred payments given by Miller and paid the only one which has been taken up upon the lots 77 and 78, and
3 has also paid the two notes for deferred purchase-money upon the purchase of the sublot 76.

5. That after the last purchase, to wit, of lot 76, the said Miller and Lola, his wife, by a deed of fee-simple dated the 27th day of December, 1883, did convey all of the said pieces or parcels of ground and premises unto your complainant, and such deed was recorded on the 4th day of October, 1888, in the land records of this District, and is prayed to be taken as a part hereof for greater certainty.

6. That on or about the — day of February, 1888, the said John L. Miller died and by his last will, dated December 1st, 1880, he devised his estate to his widow and the said will was duly probated on the 27th of April, 1888, in the orphans' court of this District, and is prayed to be taken as a part hereof for greater certainty.

7. That on the 16th day of June, 1888, the defendants Elizabeth M. Houchens, Ella A. Goudy, and Richard H. Miller, claiming to be collateral heirs of the said John L. Miller, filed a bill in this honorable court, being equity cause number 11204, docket 28, by the defendants Williamson and Willoughby, as solicitors, against Lola Miller, the widow, and George M. Jones, the executor, of the said John L. Miller, and Henry H. Bates and Ashford and Truesdell, the holder of the notes and the trustees in the deed of trust aforesaid upon the lots 77 and 78, alleging, among other things, that said John L. Miller died possessed of the sublots 76, 77, and 78, in square 239, and of a large amount of personalty acquired
4 after the will, to which they were entitled, and that the widow was in receipt of the rents and profits of said real estate, and praying, among other things, a partition of sale of the realty and assignment or commutation of the dower of the said widow; that answers were filed by the holder of said notes and the trustees, and on the 3rd day of September, 1888, by George M. Jones, the executor, wherein he denied any knowledge of any realty acquired by said John L. Miller after the date of the will or of the deed of trust to Ashford and Truesdell to secure Bates $5,000, and denied that payment of the said notes for said $5,000 should be paid from the personal estate of said Miller, and further denied that he had any knowledge of any personal estate left by the said testator which was not returned in the inventory filed in the orphans' court.

And on the 4th day of September, 1888, the said Lola Miller filed her answer in the cause and admitted that her late husband did purchase the said lots aforesaid and described in the bill, and further answered that he conveyed them away in his lifetime. She denied all knowledge of the matter alleged in regard to the trust

to secure the notes on said property, and had no knowledge of any personal property not in the inventory, nor of any real estate of which her husband died seized, and denied she had any issues or profits from or the use of any real estate owned or alleged to have been owned by her husband at his death.

8. And complainant says she learned that such a suit was pending and consulted counsel as to the advisability of intervening, and she further alleges on information and belief that the defendants Willoughby and Williamson were informed some time subsequently to filing their bill of her title and of the deed by Miller to her, and that she had always control and had possession of the property from the date of the original purchases, and that the money came from her and he advanced and paid no part thereof, but simply took the titles as her trustee, and afterwards, during the month of August, at the suggestion of one of said solicitors, the said deed from Miller to complainant was shown to both of them, and the said Willoughby took a memorandum of her full name and the contents thereof and said Williamson suggested an amendment of their bill making complainant a party.

9. But the said defendants did not amend their bill and did, upon learning the said John L. Miller had no right or title at his death, set about to devise a scheme to defraud and cheat complainant and avail themselves of her property under the device or pretense of a *bona fide* purchaser or holder of negotiable notes to be given by such pretended purchaser and negotiated and discounted by such persons as they might be able to dispose of them to, and the said defendant, Kirby, was brought into such conspiracy to play the part of such pretended purchaser and to give said notes; and the said Williamson did thereupon, with a full knowledge of complainant's title, cause the defendants Houchens, Goudy, and Miller to execute a deed conveying to the said Kirby all their pretended right, title, and interest in said lots as heirs of John L. Miller for a pretended consideration of $12,000, subject to any dower right of the said Lola Miller, the debts of John L. Miller, and subject to so much of the notes of $5,000 as were unpaid after applying his personal estate, and said deed was dated August 30, 1888.

10. And in furtherance of such scheme to defraud and cheat complainant a deed of trust was prepared for the said Kirby and wife to the said Willoughby and Williamson, reciting that said Kirby had executed three notes, each for $3,000, to the order of the defendants Houchens, Goudy, and Miller and conveyed to said Willoughby and Williamson the property conveyed to him, subject to the dower of the widow and the debts of the said John L. Miller, as set forth in the deed to him, the said Kirby.

11. And she is informed and believes and alleges upon such information and belief that the relations of the said Williamson and Kirby are very intimate and have heretofore been and were at the time of these transactions and conspiracy those of counsel and client and because of such relation of confidence and intimacy the said Kirby was chosen; that the said Kirby is a money-lender and

was advanced by or for her and obtained by her in no way from (and not by gift or conveyance from) her husband; that complainant immediately upon the purchases entered into possession and control of the pieces of ground and premises, and has payed all taxes and charges and received all profits and occupied the house on a part of lots as her dwelling, and has paid all interest upon the notes for the deferred payments given by Miller and paid the only one which has been taken up upon the lots 77 and 78, and
3 has also paid the two notes for deferred purchase-money upon the purchase of the sublot 76.

5. That after the last purchase, to wit, of lot 76, the said Miller and Lola, his wife, by a deed of fee-simple dated the 27th day of December, 1883, did convey all of the said pieces or parcels of ground and premises unto your complainant, and such deed was recorded on the 4th day of October, 1888, in the land records of this District, and is prayed to be taken as a part hereof for greater certainty.

6. That on or about the — day of February, 1888, the said John L. Miller died and by his last will, dated December 1st, 1880, he devised his estate to his widow and the said will was duly probated on the 27th of April, 1888, in the orphans' court of this District, and is prayed to be taken as a part hereof for greater certainty.

7. That on the 16th day of June, 1888, the defendants Elizabeth M. Houchens, Ella A. Goudy, and Richard H. Miller, claiming to be collateral heirs of the said John L. Miller, filed a bill in this honorable court, being equity cause number 11204, docket 28, by the defendants Williamson and Willoughby, as solicitors, against Lola Miller, the widow, and George M. Jones, the executor, of the said John L. Miller, and Henry H. Bates and Ashford and Truesdell, the holder of the notes and the trustees in the deed of trust aforesaid upon the lots 77 and 78, alleging, among other things, that said John L. Miller died possessed of the sublots 76, 77, and 78, in square 239, and of a large amount of personally acquired
4 after the will, to which they were entitled, and that the widow was in receipt of the rents and profits of said real estate, and praying, among other things, a partition of sale of the realty and assignment or commutation of the dower of the said widow; that answers were filed by the holder of said notes and the trustees, and on the 3rd day of September, 1888, by George M. Jones, the executor, wherein he denied any knowledge of any realty acquired by said John L. Miller after the date of the will or of the deed of trust to Ashford and Truesdell to secure Bates $5,000, and denied that payment of the said notes for said $5,000 should be paid from the personal estate of said Miller, and further denied that he had any knowledge of any personal estate left by the said testator which was not returned in the inventory filed in the orphans' court.

And on the 4th day of September, 1888, the said Lola Miller filed her answer in the cause and admitted that her late husband did purchase the said lots aforesaid and described in the bill, and further answered that he conveyed them away in his lifetime. She denied all knowledge of the matter alleged in regard to the trust

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8. And complainant says she learned that such a suit was pending and consulted counsel as to the advisability of intervening, and she further alleges on information and belief that the defendants Willoughby and Williamson were informed some time subsequently to filing their bill of her title and of the deed by Miller to her, and that she had always control and had possession of the property from the date of the original purchases, and that the money came from her and he advanced and paid no part thereof, but simply took the titles as her trustee, and afterwards, during the month of August, at the suggestion of one of said solicitors, the said deed from Miller to complainant was shown to both of them, and the said Willoughby took a memorandum of her full name and the contents thereof and said Williamson suggested an amendment of their bill making complainant a party.

9. But the said defendants did not amend their bill and did, upon learning the said John L. Miller had no right or title at his death, set about to devise a scheme to defraud and cheat complainant and avail themselves of her property under the device or pretense of a *bona fide* purchaser or holder of negotiable notes to be given by such pretended purchaser and negotiated and discounted by such persons as they might be able to dispose of them to, and the said defendant, Kirby, was brought into such conspiracy to play the part of such pretended purchaser and to give said notes; and the said Williamson did thereupon, with a full knowledge of complainant's title, cause the defendants Houchens, Goudy, and Miller to execute a deed conveying to the said Kirby all their pretended right, title, and interest in said lots as heirs of John L. Miller for a pretended consideration of $12,000, subject to any dower right of the said Lola Miller, the debts of John L. Miller, and subject to so much of the notes of $5,000 as were unpaid after applying his personal estate, and said deed was dated August 30, 1888.

10. And in furtherance of such scheme to defraud and cheat complainant a deed of trust was prepared for the said Kirby and wife to the said Willoughby and Williamson, reciting that said Kirby had executed three notes, each for $3,000, to the order of the defendants Houchens, Goudy, and Miller and conveyed to said Willoughby and Williamson the property conveyed to him, subject to the dower of the widow and the debts of the said John L. Miller, as set forth n the deed to him, the said Kirby.

11. And she is informed and believes and alleges upon such information and belief that the relations of the said Williamson and Kirby are very intimate and have heretofore been and were at the time of these transactions and conspiracy those of counsel and client and because of such relation of confidence and intimacy the said Kirby was chosen; that the said Kirby is a money-lender and

note-shaver and engaged in speculating on doubtful and desperate rights and claims of speculative values, and that, in furtherance of their conspiracy and scheme to avoid the notice of complainant's rights arising from the knowledge of Williamson, an person was employed to make an examination of the title with a view of giving color to the pretense that the negotiation of the said Kirby was *bona fide* and his purchase without notice of any adverse title to his grantors and in the regular course of business.

7 12. And she further shows that subsequently and on or about the twenty-ninth day of September, 1888, the said Kirby and his wife executed the aforesaid trust to said Willoughby and Williamson, and on the 1st day of October, 1888, the said deed to Kirby and the trust to Willoughby and Williamson were recorded in Liber 1335, folios 295 and 299, one of the land records of the District, and are prayed to be taken as a part hereof for greater certainty.

13. And she further says that the said Kirby well knew she was the owner of the property, and that his grantors had no title, and that the said John L. Miller had conveyed the property in his lifetime, and was careful to avoid all possible sources of information, and took no steps to ascertain the indebtedness of the said John L. Miller from his executor or what was due on the notes from Bates, the holder thereof, nor did he approach the widow as to her dower, any of whom would necessarily have told him that said Miller had conveyed the property to complainant; and he never examined the premises or approached the house or made any inquiries as to who occupied the house and what relation complainant bore to the same, as tenant or otherwise. Complainant says he well knew that any of such inquiries would have fastened upon him a full knowledge, and he studiously avoided such sources of information, as he would have been making evidence to rebut the pretended *bona fide* purchase by him, and he made no such investigations and inquiry as any ordinarily prudent person would have made who was contemplating making a *bona fide* purchase of such property.

14. She is informed that the said Kirby, when approached
8 and told that the property had been conveyed to complainant, replied that there was no record of conveyance, and his attorney had examined the title and found no such deed, and also admitted that he closed the transaction, received his deed, and delivered the deed of trust on the first day of October, and pretended that at the same time he paid $3,000 in money and delivered the three notes each of $3,000; and she says that, in addition to personal knowledge of said Kirby and notice to his attorneys, the answers of the executor and widow in the equity cause No. 11204 were on file and of record and were notice to the said Kirby and his agents and attorneys that his grantors took no title from Miller, as he had conveyed it away in his lifetime; and she further says upon information and belief that it is not true that the said Kirby ever paid $3,000 in money and $9,000 in three promissory notes to the said defendants, Houchens, Goudy, and Miller, as pretended, or that he ever paid any such sum and notes to any one, but that any money

or notes that may have passed or pretended to have been passed were delivered to said Williamson and Willoughby or to both of them or some other person to hold the same, and that any consideration that may have been pretended to have been passed to the grantors yet remains to be distributed among the defendants, and that the said Kirby, Williamson, and Willoughby would not trust their codefendants, who are financially irresponsible, with their shares until they felt themselves secure from liability or molestation with the fruits of their conspiracy.

15. That on the third day of October, 1888, the defendant Kirby addressed a letter to complainant's husband, as she is in-
9 formed, and handed him a paper, a copy of which is hereto attached and marked Exhibit "A" and which is prayed to be taken as a part hereof, and such was the first intimation complainant had of such pretended sale.

16. That the said deed and deed of trust are clouds upon her title.

Wherefore she prays—

1. That the said deed and deed of trust be declared by this honorable court to be fraudulent and void and the same be set aside and cancelled.

2. That the said defendants, L. Cabell Williamson, Westel Willoughby, Elizabeth M. Houchens, Ella A. Goudy, Richard H. Miller, and each of them, their agents and attorneys, be restrained by the order and injunction of this court from negotiating any of said notes or passing or disposing of any moneys any of them may have received or may be in their control or possession and referred to in this bill, and the said William Wallace Kirby be likewise restrained and enjoined from paying any moneys to any person whatever because of such fraudulent purchase or fraudulent notes or from passing the notes into the possession or control of any other person.

3. That she may have such other and further relief in the premises as the nature of the case may require.

4. To which end complainant prays process against the defendants William Wallace Kirby, L. Cabell Williamson, Westel Willoughby, Elizabeth M. Houchens, Ella A. Goudy, and Richard
10 Henry Miller, requiring them to appear and answer the exigencies of the bill.

(Signed) MARIA E. TALLMADGE.

S. S. HENKLE AND
W. K. DUHAMEL,
Solicitors for Complainant.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have heard read the bill by me subscribed and know the contents thereof, and the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

(Signed) MARIA E. TALLMADGE.

Subscribed and sworn to before me this 6th day of October, 1888.

R. J. MEIGS, *Clerk*,
By W. E. WILLIAMS, *Ass't Clerk*.

EXHIBIT "A."

Copy.

WASHINGTON, D. C., *Oct. 3rd*, 1888.

Mr. Henry H. Tallmadge.

DEAR SIR: This is to notify you that I have bought the property No. 1313 R street N. W., and I understand you are the tenant of said property. I will expect you to pay me the rent from the first of this month, October, 1888. The rent will be $83.33⅓ per month.

Yours truly,
W. W. KIRBY,
City Hall.

11 *Affidavits in Support of Injunction.*

Filed October 6th, 1888.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WILLIAM WALLACE KIRBY. } No. 11382.

William K. Duhamel, being duly sworn, deposes and says he is of counsel for complainant; that heretofore, in the latter part of July or first of August, 1888, he was spoken to about the equity suit 11204 and told of the title of Mrs. Tallmadge and consulted as to the course to pursue; that subsequently he told Judge Willoughby that John L. Miller had conveyed to Mrs. Tallmadge, and Mr. Williamson afterwards asked him about it and he repeated to him that Miller had conveyed to Mrs. Tallmadge. Some one of them expressed a desire to see the deed and affiant got it and showed it to Judge Willoughby, who scrutinized it and made some memoranda from it. Affiant then took it to the said Williamson, who also examined it, and affiant then returned it to Mrs.
12 Tallmadge. Mr. Williamson at the time spoke of making Mrs. Tallmadge a party, and the time when the deed as aforesaid was shown to Willoughby and Williamson was some time in August, and affiant is certain it was some time prior to the last of the month and the 30th day of August.

That the deed was handed to affiant by the complainant's husband, who sat in affiant's office while he went to those of Willoughby and Williamson, and when affiant returned he told the said husband of the interviews and handed the deed back to him. Affiant is informed by Rutledge Wilson, the notary who acknowledged the deed to Kirby, that the people Houchens, Goudy, and Miller were un-

known to him when they called, and they told him they came from Williamson's office; that he went with them to the said office and found Williamson out, and one L. Fugitt witnessed the signatures, who has the rooms with Williamson.

D. K. DUHAMEL.

Subscribed and sworn to before me this 6th day of October, 1888.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

13 In the Supreme Court of the District of Columbia.

MARIE E. TALLMADGE
vs.
W. W. KIRBY *et al.* } Equity. 11382.

Henry H. Tallmadge, being duly sworn, deposes and says he is the husband of the complainant; that he visited the office of W. K. Duhamel some time after the bringing the equity suit 11204 to consult and obtain advice as to what steps his wife should take in regard to the same; that at a subsequent time he was told by said W. K. Duhamel that he had told the solicitors bringing the suit of the heirs of Miller of Mrs. Tallmadge's title and he wanted the deed to show them; that some time after, in August and prior to the 30th of August, affiant took the deed to the said Duhamel and sat in his office while the said Duhamel went into the building where Willoughby has his office, and after some time saw him go down the street towards Williamson's, and when the said Duhamel returned
he told affiant he had seen both Willoughby and Williamson
14 and shown them the deed, and that it was proposed to amend
the bill and make Mrs. Tallmadge a party, and the affiant received back the deed from the said W. K. Duhamel and took it home.

HENRY H. TALLMADGE.

Subscribed and sworn to before me this 6th day of October, 1888.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

15 Filed Oct. 6, 1888.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

MARIA E. TALLMADGE, Complainant,
vs.
WILLIAM W. KIRBY, Defendant. } No. 11382, Equity Docket —.

Maria E. Tallmadge, the complainant, and —— ——, —— ——, sureties, hereby undertake to make good to the defendant all damages by him suffered or sustained by reason of wrongfully and in-

equitably suing out the injunction in the above-entitled cause, and stipulate that the damages may be ascertained in such manner as the justice shall direct, and that on dissolving the injunction he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction.

MARIA E. TALLMADGE.
JULIUS LANSBURGH.
—— ——.

Approved —— —, 188–.
—— ——, *Justice.*

Julius Lansburgh will be accepted as surety.
CHAS. P. JAMES, *J.*

[Endorsed:] No. 11382, equity docket 28. Maria E. Tallmadge, compl't, *vs.* William Wallace Kirby, def't, *et al.* Injunction undertaking. (Rule 40.) Filed Oct. 6, 1888. R. J. Meigs, clerk.

16 *Subpœna.*

Issued October 6th, 1888.

In the Supreme Court of the District of Columbia, October 6th, 1888.

MARIA E. TALLMADGE, Complainant, *against* WILLIAM WALLACE KIRBY *et al.*, Defendants. } No. 11382, Equity Docket 28.

The President of the United States to William Wallace Kirby, L. Cabell Williamson, Westel Willoughby, Elizabeth M. Houtchen, Ella A. Goudy, and Richard Henry Miller, defendants:

You are hereby commanded to appear in this court at its first special term occurring ten days after service of this subpœna, and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness E. F. Bingham, chief justice.

[SEAL.] R. J. MEIGS, *Clerk,*
By W. E. WILLIAMS, *Ass't Cl'k.*

17 MEMORANDUM.—That the defendant- herewith served *is* to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

The defendant is hereby restrained, as prayed in the within-mentioned bill, until further order, to be made, if at all, after a hearing which is fixed for the twelfth (12th) day of October, 1888, of which take notice, provided said plaintiff first gives an undertaking under rule 40.

By the court:

CHARLES P. JAMES, *Justice.*

Marshal's Return.

Served copy within subpœna and restraining order on Wm. Wallace Kirby, L. Cabell Williamson, and Westel Willoughby October 6th, 1888; Richard Henry Miller. October 8th, 1888; Ella A. Goudy and Elizabeth M. Houtchen not to be found, Nov. 6th, 1888.

A. A. WILSON, *Marshal.*

18 *Answer of Defendant Willoughby. Filed Oct.* 25, 1888.

Supreme Court of the District of Columbia.

MARIA E. TALLMADGE *vs.* WILLIAM W. KIRBY *et als.* } Equity. No. 11382.

The defendant W. Willoughby, reserving all exceptions to the bill of complaint and protesting that the same does not set forth or pray for any relief against him, yet it suggesting fraud, for which reason alone he answers the said bill, for such answer says:

1. That he admits the allegations of the first paragraph of said bill.

2. He denies upon information and belief that the complainant advanced the said purchase-money for the lots mentioned in the second paragraph of said bill.

3. He denies upon information and belief that the complainant furnished the said Miller with the money to purchase the lot mentioned in the third paragraph of the said bill, but admits that said Miller took a deed therefor and executed a deed of trust therefor.

4. He denies upon information and belief that said Miller had no right or interest in the said pieces and parcels of land referred to in the fourth paragraph of the bill, and that he was simply a trustee for complainant, and he denies that the purchase-money was advanced by her in no way for and not by gift or conveyance from her husband. He has no knowledge of the remaining allegations of said paragraph of said bill, but calls for strict proof thereof.

19 5. This defendant has no knowledge of the allegations of the fifth paragraph of said bill, except that what purported to be a deed of such description has been exhibited to him.

6. This defendant admits the allegations of the sixth paragraph of said bill.

7. He also admits that suit was commenced and bill filed and answers thereto in equity cause No. 11204, as stated in the seventh paragraph of said bill, referring for greater certainty to the proceedings in said cause.

8. This defendant denies that he had any information of any title or interest of complainant in the said property, except what purported to be a deed from said Miller and wife to her was exhibited to him by W. K. Duhamel and a statement made to him by said Duhamel that she had paid the purchase price therefor, he saying

that he would produce the evidences of such claim, which, however he never did. This defendant, from information otherwise received and from several suspicious circumstances connected therewith, did not believe that complainant had any interest in the said property, but that she was endeavoring to perpetrate a fraud upon the heirs of the said Miller.

9. If by "said defendants" is meant the defendants to this suit instead of the defendants to equity suit No. 11204, this defendant, W. Willoughby, denies that he set about to devise a scheme to defraud and cheat complainant of her property, as alleged in the ninth paragraph of said bill, or in any other way or was concerned in any such scheme. He never had any communication with
20 said Kirby, either directly or indirectly, upon this subject. He knows nothing whatever of any such conspiracy as is alleged or of any of the allegations in relation to the said Williamson in said paragraph and has no knowledge whatever as to the deed described therein, never having seen it or known of its contents except upon information long after the execution thereof.

10. This defendant did not know and to his best recollection had no information that he was named as trustee in the said deed of trust referred to in the tenth paragraph of the bill of complaint until he read the said bill. He never saw it, never knew the contents thereof, never saw the said notes or any of them or knew the contents thereof, and has had no control over them whatever.

This defendant further says that he left the city of Washington on the sixteenth day of August, 1888, for Brookside, West Virginia; that he was soon after taken sick, being very ill and confined to the bed and under the care of a physician at the time of the alleged conspiracy and of the execution of the said deed, August 30th, at Brookside, West Virginia, and so remained until September eig-th, when he was brought home, still very ill, he remaining home on account thereof until September 18th, he not going to his office during that time. This defendant says that some time after his arrival home he learned for the first time that a deed had been executed by the said defendants Houchens, Goudy, and Miller to the said defendant Kirby, the said Houchens having executed the same at the suggestion of the said Miller, and that the idea of making this sale had originated with the said Miller without suggestion from any
21 one of the defendants in this cause. Defendant denies all notice or information as to there being any fraud or conspiracy in relation to said transaction, and certainly denies having any connection with any such fraud or conspiracy, if any existed.

11. This defendant has no knowledge or information as to the allegations of the eleventh paragraph of the said bill.

12. This defendant has no knowledge or information as to the allegations of the twelfth paragraph of the said bill except from the bill itself. He has no recollection of his having been informed that he was trustee in said deed of trust; if so, he had forgotten it and was surprised when he read it in the bill.

13. This defendant has no knowledge as to the allegations of the thirteenth paragraph of said bill.

14. This defendant has no knowledge of the allegations of the fourteenth paragraph of the bill except that he denies that any money or notes have been passed or delivered to him or to any one for him to his knowledge, and he has never known or been informed as to what has been done in relation to the same.

15. This defendant has no knowledge as to the allegations of the fifteenth paragraph of the said bill.

And, having now fully answered, this defendant prays to be hence dismissed with his costs.

(Signed) W. WILLOUGHBY.

22 DISTRICT OF COLUMBIA, *ss:*

W. Willoughby, being sworn, says: I do solemnly swear that I have read the above answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

(Signed) W. WILLOUGHBY.

Sworn to before me Oct. 25, 1888.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

23 *Answer of Defendant Wm. W. Kirby. Filed Oct.* 29, 1888.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WM. WALLACE KIRBY *et als.* } Equity. 11382.

The answer of the defendant Wm. Wallace Kirby to the bill of complaint in the above-entitled cause.

For answer to said bill of complaint I say as follows:

1. I admit the residence of compl't and defendants as alleged in said bill of complaint.

2. Replying to paragraph 2 of the bill of complaint, I deny that the complainant on the 2nd day of September, 1882, purchased the two lots numbered 77 and 78, in subdivision of square 239, in the city of Washington, District of Columbia, as alleged in said bill of complaint.

I admit that the said John L. Miller took the title to the said two lots unto himself by a deed in fee-simple, which was duly recorded in Liber 1015, folio 418 *et seq.*, one of the land records of the District of Columbia, as is alleged in said paragraph 2; but I deny that the complainant advanced the money or any part thereof unto the said John L. Miller for the purchase of the said two lots, and that the said John L. Miller took the said two lots as trustee for the complainant as charged in said paragraph.

I admit, as alleged in said paragraph, that on the same
24 day, to wit, on the 2nd day of September, 1882, the said John L. Miller executed five promissory notes, each for $1,000, in part payment of the purchase-money secured by a deed of trust by him and his wife upon the said two lots of ground and duly recorded in Liber 1015, folio 420 *et seq.*, of the land records of the District of Columbia, but I say that in the entire transaction in respect of the purchase of the two said lots by the said John L. Miller it nowhere appeared of record prior to the 4th day of October, 1888, that the complainant had any right, title, or interest in or to the said two lots, nor did the deed aforesaid to the said John L. Miller show that he took the two said lots as trustee for the complainant.

3. I admit that on or about the 29th day of June, 1883, the said John L. Miller purchased the next adjoining lot to the above-described two lots, being lot 76, in square 239, and took the deed to himself, which deed was recorded on the 30th day of November, 1883, in Liber 1063, folio 97, and that he executed a deed of trust with his wife to secure the deferred payments of $1,266, which deed of trust was recorded June 30, 1883 (the date of its execution), in Liber 1048, folio 161, as alleged in paragraph 3, but I deny that the complainant furnished the said John L. Miller with the money to purchase the said lot 76, as charged in said paragraph, and I solemnly aver that according to my best knowledge and belief no such payment by the complainant appears anywhere of record, and that I have never had any notice that said purchase-money or any part thereof was advanced by the compl't.

4. I deny that the said John L. Miller had no right or interest
25 in said three lots 76, 77, & 78, but was simply a trustee for complainant, as averred in paragraph 4 of the bill herein; but, on the contrary, I say that it was shown by the land records of the District of Columbia, by which I was guided in the purchase of the said three lots, that the fee-simple title thereto was fully, entirely, and solely in the said John L. Miller, subject only to the deed of trust for $5,000 on lots 77 and 78.

I deny that the whole of the purchase-money of said three lots was advanced by complainant in money not obtained by gift or conveyance from her husband, as alleged in said paragraph, and leave her to make such proof of this averment as she may be advised is requisite.

As I have no knowledge thereof, I cannot answer that part of this paragraph which alleges that immediately upon the purchase of the said three lots by the said John L. Miller the complainant entered into possession of said premises and occupied the same as her dwelling and paid the taxes and insurance thereon and received the rents, issues, and profit thereof, but I deny that it anywhere appears of record that she had a right to occupy the same without the payment of rent therefor, and I charge that if she paid taxes and insurance thereon and no rent therefor that she is now answerable to the heirs-at-law of the said John L. Miller for the difference between the amount of taxes and insurance so paid and the fair rental value of said property.

I deny that the complainant has paid all interest upon the notes for deferred payments on lots 77 & 78, and that she has paid
26 the only note that has been paid on these two lots, and that she has paid the two notes for deferred payments on lot 76, as she alleges in this paragraph; but upon information and belief I charge that all said interest and the said three notes were paid by the said John L. Miller in his lifetime with his own money, either in cash or by his personal check.

5. Replying to paragraph 5 of the bill of complaint herein, I say that I have no knowledge that the said John L. Miller and Lola, his wife, by a deed of fee-simple dated December 29, 1883, conveyed all of said three lots to the complainant, as alleged therein.

I admit, however, that a deed purporting to be such a deed was admitted of record among the land records of the District of Columbia on the 4th day of October, 1888, but I invite the attention of the court to the very singular and significant fact that this deed was not recorded for nearly five years after its pretended execution by the said John L. Miller and wife and not until after I had purchased the said three lots and put my deed of record in Liber —, folio —.

6. I admit the averments of paragraph 6 in respect of the death in February, 1888, of the said John L. Miller and the probate of his last will and testament, dated December 1, 1880, whereby certain real estate was devised to his widow, but I invite the attention of the court to the fact that the real estate mentioned in said last will and testament was subsequently to the making of said last will and testament sold by the said John L. Miller and wife, and that the said three lots of ground, the subject of this litigation, were
27 purchased by him thereafter and are not mentioned in said last will and testament nor in any codicil thereto.

7. I admit the averments of the 7th paragraph in respect of the equity proceedings No. 11204 to be substantially true as alleged therein, but declare that I had no knowledge of the nature of these proceedings, except that it was a suit for partition, until after my purchase of the said three lots.

8. Replying to paragraph 8, I say that I have no knowledge that the complainant consulted counsel as to the advisability of her intervening as a party in said equity cause No. 11204, and that the d'f'ts Williamson & Willoughby had knowledge of this fact.

Nor had I any knowledge that the said John L. Miller had conveyed said three lots to the complainant, and that she had been in possession thereof since their original purchase, nor had I any knowledge that the deed had been exhibited by complainant to the d'f'ts Willoughby and Williamson, and that the former had made a memorandum therefrom, and I now solemnly declare that not one of the matters and things averred in this paragraph was ever communicated to me by any one whomsoever previously to the purchase by myself of the said three lots.

9. Replying to paragraph 9 of the bill of complaint herein, I deny that I had any knowledge whatever that the said John L. Miller had no right or title to the said three lots at the time of his

death; but, on the contrary, I aver that the abstract of title furnished me by my attorney showed the title to the said three lots
28 to be in the said John L. Miller at the time of his death, and that my said attorney reported to me that I could take good title thereto from the collateral heirs-at-law of the said John L. Miller.

I solemnly deny that I set about with any person or persons to devise a scheme to cheat the complainant out of any property whatever, as alleged in said paragraph 9.

And I deny that I was brought into any conspiracy with any person or persons whomsoever to play the part of pretended purchaser of the said three lots and to give a pretended consideration therefor, as alleged in said paragraph.

I have no knowledge of the d'f't Williamson's connection with my purchase of said three lots, except that at that time I believed him to be the attorney of the said heirs-at-law of the said John L. Miller, from whom, without consultation with the d'f't Williamson in good faith, without knowledge of any adverse claim to title or any effort to perpetrate fraud whatever, and for full value, I purchased the said three lots, paying $12,000 therefor, and taking the said three lots subject to the widow's dower and a certain incumbrance whereon of $5,000.

10. I admit the execution by myself and wife of the deed of trust to secure the deferred payment of three notes of $3,000 each, mentioned in paragraph 10 of the bill herein; but I solemnly deny that said deed of trust was executed in pursuance of any scheme on my part (or of any scheme on the part of any other person or persons, so far as I have any knowledge) to defraud and cheat complainant, as alleged in said paragraph, and, on the contrary,
29 I declare that said deed of trust was executed to secure the said heirs-at-law of the said John L. Miller the payment of money actually due by me to them under my fair and honest contract with them.

11. I admit, as averred in paragraph 11 of the bill of complaint, that the relations of the d'f't Williamson and myself are now and have been for many years past of the most intimate and friendly character, but I deny that our relations were those of counsel and client at the time of my negotiation for the purchase of the said three lots.

On the contrary, I declare that Mr. William T. Bailey was my attorney and legal adviser; that the abstract of title was furnished by him; that he reported the record title to said three lots in the said John L. Miller and advised me that I could take good title thereto from the grantors in the deed to me.

I deny that I was a party to any scheme or conspiracy whatever, and that I had any knowledge whatever of any scheme or conspiracy in the transaction on the part of others.

The accusation made in this paragraph that I am "a moneylender and note-shaver and engaged in speculating in doubtful and desperate rights and claims of speculative value," considered in the light of many other averments of the bill of complaint, is a foul

aspersion on my good name and reputation, and, answering unto the same in the sense and meaning of the language used, I deny the charge.

12. I admit the execution of the deed to myself and the deed of trust by myself and wife and the record of them on the 1st day of October, 1888, in Liber 1335, folios 295 and 299, as alleged in paragraph 12.

30 13. I deny that I well knew that complainant was the owner of the said three lots, and that my grantors had no title, as alleged in this paragraph of the bill, and I say that my lawyer reported the contrary.

I deny that I knew that the said John L. Miller had in his lifetime conveyed the said three lots to compl't, and I say that my abstract of title, furnished by a competent lawyer, showed no such conveyance.

I deny that I took no steps to ascertain the indebtedness of the said John L. Miller or what was due Mr. H. H. Bates under the deed of trust on said lots. On the contrary, I declare on information and belief that all such inquiries were made by my lawyer, and that he reported to me the sum of $4,000 due under said deed of trust and advised me to purchase the said three lots.

I admit that I did not approach the widow as to her dower, but declare that, as I knew what the law fixed as her dower, there was no necessity for me to approach her on that subject.

I deny that I never examined the premises or approached the house or inquired as to the occupant thereof, as alleged in this paragraph of the bill. On the contrary, I aver that I twice examined the premises, taking with me on the occasion of my first visit Mr. Lewis Pierce, to have his idea of the value of the said three lots, and going alone the second time for the purpose of preparing a plan of the premises and improvement thereon for the guidance and information of my lawyer. On these two occasions I was compelled to approach the house and did approach the house and learned who the occupant was.

31 I deny that I avoided all sources of information and inquiry in relation to the said three lots purchased by me, as alleged in this paragraph.

On the contrary, I say that my previous answers to this paragraph and the former paragraphs of this bill of complaint show that I was careful, cautious, and prudent, and exercised that diligence throughout the entire transaction that would guide any careful business man.

14. I admit that when I was approached and told that the said three lots had been conveyed in Miller's lifetime to the complainant I replied that there was no record of such conveyance and that my lawyer had examined the title and found no such deed, and that I also admitted that I had closed the transaction, received my deed, and delivered the deed of trust on the 1st day of October, 1888, as alleged in this paragraph.

This interview was with Mr. Tallmadge, brother-in-law of the complainant, and Mr. Duhamel, one of the solicitors for complain-

ant, and took place after my deed to said three lots had been admitted of record.

I deny that there was any pretense in my statement to Messrs. Tallmadge and Duhamel that at the same time I had paid $3,000 in money and given my three notes for $3,000 each; that statement was true and I now repeat it as the truth.

I know nothing of the answers filed by the executor and widow in equity cause No. 11204, but I am informed and believe and so aver that these answers do not show that the said John L. Miller had no title to said three lots at the time of his decease.

32 In denying the allegations contained in the last 22 lines of this paragraph of the bill, I say that it is true that I paid $3,000 in cash and gave my three notes of $3,000 each to the defendants Houchens, Goudy & Miller, and that said cash and notes were not given to the d'f'ts Willoughby & Williamson or to either of them or to any other person to hold the same; and I further say that so far as I am concerned it is not true that I would not trust the d'f'ts Houchens, Goudy & Miller with the said money and notes until I found myself free from liability and molestation on account of any conspiracy whatever.

15. In reply to this paragraph of the bill, I admit that on the 3rd day of October, 1888, I notified complainant's husband that I had become the owner of the premises occupied by him, and that from and after the first day of October, 1888, the rent of the same must be paid to me at $83.33 per month; but I cannot say whether or not this was the first notice that complainant had that I had become the owner of the said three lots.

16. In reply to this paragraph of the bill, I answer that the said deed to myself and the said deed of trust from myself and wife are not clouds upon complainant's title to the said three lots, for the reason that she has never had any record title thereto that could become clouded thereby.

In conclusion and final answer I wish to say:

That on or about the 1st day of August, 1888, I was called upon by Mr. Richard H. Miller, one of the defendants to this cause, and with whom I had no personal acquaintance.

He informed me that Mr. Westerfield, his uncle, whom I well knew, had referred him to me and stated that he and the

33 d'f'ts Elizabeth M. Houchens and Ella Goudy were the only heirs-at-law of John L. Miller, deceased, and that as such heirs-at-law were the owners of lots 76, 77, and 78 in square 239 on the north side of R street, between 13th & 14th streets N. W., which they were anxious to sell and desired me to purchase, and said they would sell it for $16,000.

I replied that I would consider the matter and that he could see me again, and he left me.

In a day or two after this visit from the d'f't Miller I went, as stated in paragraph 13 of this answer, with Mr. Lewis Pierce and examined the said three lots, and had his opinion as to the value of said lots.

Some time about the middle of August the d'f't Miller again

called on me and inquired what I thought of his proposition. I then informed him that I would take the property at his price, but that I could not pay all cash; that I would pay him $3,000 down and give him my three notes in equal payments at one, two, and three years for the remaining $13,000 less any incumbrance that might be on the property, and to this he agreed. Thereupon I informed him that it would take eight or ten days to get an abstract of title; that he could see me again at the expiration of that time, and that if my lawyer reported good title, I would then be ready to comply with the terms of sale.

Then I went again to the premises, as stated in paragraph 13 of this answer, and made a drawing in pencil on paper of the said three lots, and, returning, handed this drawing to Mr. Wm. T. Bailey, a member of the Washington bar, with the request
34 that he furnish me as early as practicable with an abstract of the title to the three lots shown on the said plan drawn by myself.

Mr. Bailey furnished me with this abstract of title on the 24th day of September, 1888, and I at once informed the d'f't Miller that I would take the property, and on or about the 1st day of October, 1888, the said d'f't Miller brought me the deed to the said property duly executed and acknowledged by himself and the said d'f'ts, Houchens & Goudy.

Upon receipt of this deed, not knowing of the d'f't Willoughby's connection with the said equity cause as solicitor for one of the grantors, but believing that the d'f't Williamson represented them all, I went to the said d'f't Williamson's office and in his presence paid d'f't Miller $3,000 in money, and delivered him my three promissory notes for $3,000 each, and payable in one, two, and three years after date respectively, and at the same time delivered to the said d'f't Miller a deed of trust executed by myself and wife to secure the payment of the said three promissory notes; and immediately thereafter and on the same day the said deed and deed of trust were admitted of record in Liber No. —, folios —, one of the land records of the District of Columbia.

Two days thereafter, to wit, on the 3rd day of October, 1888, I notified the occupant of the premises that I had become the owner thereof, and that from the 1st day of October, 1888, I would charge a rental therefor of $83.33 per month.

The day after I gave this notice I was waited upon by Mr. Tallmadge and Mr. Duhamel, as stated in paragraph 14 of this answer.

35 This is the history of my connection with and my purchase of the said three lots, and I now repeat that having purchased in good faith and for full value, without knowledge or notice of any adverse claim to title or of any wrong whatever, the restraining order herein against myself ought to be dissolved and the bill of complaint as against me dismissed.

And now, having fully answered, I pray to be hence dismissed with my costs in this behalf sustained.

(Signed) WM. W. KIRBY.

WM. T. BAILEY,
Solicitor for D'f't.

I do solemnly swear that I have heard read the foregoing answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and the facts therein stated upon information and belief I believe to be true.

(Signed) WM. W. KIRBY.

Subscribed and sworn to before me this 29th day of October, 1888.

(Signed) R. J. MEIGS, *Clerk*,
(Signed) By L. P. WILLIAMS,
Ass't Clerk.

36 *Entry in Order Book* 11, *Page* 15.

MARIA E. TALLMADGE
vs.
WM. W. KIRBY *et al.* } 11382.

The clerk will please enter my appearance for defendants Nos. 2, 5, and 6.

L. CABELL WILLIAMSON.

Appearance, as ordered, entered.
'88, 11, 7. BY THE CLERK.

37 *Answer of Defendant Ella A. Goudy. Filed Dec.* 5, 1888.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WILLIAM W. KIRBY *et al.* } In Equity. No. 11382.

The separate answer of the defendant Ella A. Goudy to the bill of complaint.

For answer she says:

1. She admits the allegations contained in the first paragraph.

2 & 3. From information and belief she denies every allegation contained in the second and third paragraphs so far as they claim the ownership of the property in behalf of the plaintiff. The defendant also denies that plaintiff furnished the money for the purchase of said property to John L. Miller or that said Miller acted as trustee or in any other manner as the agent of plaintiff in the purchase of said property; but, on the contrary, from information

received, and which she believes to be true, she says that said John L. Miller purchased said property with his own money and for himself, and that plaintiff had no part or parcel in said purchases nor any interest whatsoever in said three lots or either of them.

4. From information received, and which she believes to be true, this defendant denies every allegation of the fourth paragraph, and calls for strict proof concerning the same.

38 5. She admits from information received that a deed purporting to be the deed of said Miller and his wife was admitted to record on the 4th day of October, 1888, which deed bears date December 27th, 1883, but she denies the execution of said deed or that said deed was ever intended to convey to the plaintiff the property in question, and asks that plaintiff be required to make proof of the execution and delivery of said deed and the purpose for which it was delivered, if delivered at all, with all the circumstances attending the same. She believes from all the circumstances that this is an attempt to claim property to which the plaintiff never had any title.

6. She admits the allegations as to the death and the leaving of his last will and testament as alleged in the sixth paragraph.

7. She admits that the seventh paragraph is a substantially correct relation of the facts touching the filing of the bill and its contents and of the answers with their contents.

8. This defendant denies that plaintiff ever had title to said real estate or that she ever had possession and control of it under and by virtue of such title or that she furnished the purchase-money or that Miller was her trustee. From information received she believes that said Willoughby and Williamson had the alleged deed exhibited to them by the attorney for plaintiff. She is unable to admit or deny any of the allegations about plaintiff's consultation with counsel or about said Willoughby taking a memorandum

39 of said deed or of said Williamson suggesting an amendment to said bill, for the reason that she has no information on the subject.

9. She admits the execution of the deed, but she denies that it was done after learning that said John L. Miller had no right or title to said property at the time of his death, or that she or any of her co-defendants, so far as she is aware, ever "set about to devise a scheme to defraud and cheat complainant and avail themselves of her property under the device or pretense of a *bona fide* purchaser or holders of negotiable notes to be given by such pretended purchaser and negotiated and discounted by such persons as they might be able to dispose them to." She says that said sale was made in good faith through the defendant Richard H. Miller, who brought the same about and acted as agent for Mrs. Houchens and herself and who can and will answer fully as to the same.

It is true that she had heard of the existence of the deed, but she believed it to be a fraud as she still believes. She denies that said sale was brought about through said Williamson or Willoughby, but says that the defendant Richard H. Miller, acting for himself and for said Houchens and this defendant, procured the purchaser, made

all the arrangements about completing the purchase, and finally did consummate the same. That sale was made in the utmost good faith, being confident that complainant had no right, title, or interest in said real estate. This defendant has never seen Mr. Kirby nor held any communication with him. An earnest effort was made, as this defendant is informed, to ascertain if the deed was the deed of said Miller for the purpose of conveying the property in question prior to the conveyance by the three defendants, but
40 all attempts in this direction confirmed the said three defendants that the thing was a fraud. She denies all conspiracy, fraud or intent to defraud or cheat. She also denies that said Kirby was brought into said matter to play any part, but says that he bought the property in good faith, paying therefor the sum of $12,000, the consideration mentioned in the deed, paying $3,000 in cash and giving his three promissory notes, each for $3,000.

10. She admits the execution of the deed of trust and the making and delivery of the notes, but she denies that it was in furtherance of any scheme to defraud or cheat complainant, as no such scheme had or has any existence in fact.

11. She is unable to admit or deny the allegations as to the relations existing between the defendants Williamson and Kirby or as to said Kirby's business, but she denies all conspiracy, fraud, or intent to cheat or defraud touching the transfer of said property to said Kirby.

12. She believes the allegations of the twelfth paragraph are true, being as to the making, delivery, and recording of the deed and deed of trust.

13. She is unable to admit or deny the principal allegations of the thirteenth paragraph as to what Mr. Kirby did or did not know, but she feels confident that said Kirby had no knowledge of the deed in question.

14. She is unable to admit or deny the allegation in this paragraph as to what Mr. Kirby said when approached. She says that Mr. Kirby did pay the $3,000, and that he did
41 make and pass his three promissory notes, each for $3,000, which notes the three defendants endorsed and passed off before the filing of this bill.

15. She believes the allegations of the fifteenth paragraph are true, as she knows nothing to the contrary.

16. She denies that said deed and deed of trust are clouds upon complainant's title. She says that complainant has no right or title to said property.

And, having fully answered, she asks to be hence dismissed with her reasonable costs in this behalf expended.

(Signed) ELLA A. GOUDY.

L. CABELL WILLIAMSON,
Sol'r for Defendant Goudy.

I do solemnly swear that I have read the above answer by me subscribed and know the contents thereof, and that the facts therein

stated of my own personal knowledge are true and those stated upon information and belief I believe to be true.

(Signed) ELLA A. GOUDY.

Subscribed and sworn to before me this 3rd day of ——, A. D. 1888.

(Signed) G. ERETT REARDON,
A Commissioner of Deeds for District of Columbia, in the State of Maryland, Residing at Baltimore City, 33 Lexington Street.

42 *Answer of Defendant R. H. Miller. Filed Dec. 5, 1888.*

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE *vs.* WILLIAM W. KIRBY *et al.* } In Equity. No. 11382.

The separate answer of Richard H. Miller to the bill of complaint.

1. He admits the allegations as to residence of the parties to this suit.

2 & 3. From information and belief and from such examination as this defendant has been able to make he denies that complainant purchased the three lots in question or either of them, or that she furnished or advanced any money to said John L. Miller for such purchase, or that said Miller acted as her trustee or agent when he purchased said lots. This defendant avers that said John L. Miller purchased said three lots on his own account, using his own money to pay for them, and for the balance of purchase-money he gave his own promissory notes, secured by deeds of trust on the property purchased.

4. He denies the allegations of the fourth paragraph of the bill.

5. As to the deed set up in the fifth paragraph, this defendant says that he does not believe said deed to be genuine; that he does not believe said deed was delivered; and he says that, considering the circumstances of this case and the lapse of time between the date of said deed and the date of its record, the court should not grant any relief founded on said deed. He avers that said deed is a
43 fraud.

6. He admits the allegations as to the will and death of said John L. Miller.

7. He admits the filing of the bill as set forth in this paragraph, and also the filing of the answer thereto.

8. He is unable to admit or deny the greater portion of the allegations of this paragraph, and so far as they are material asks that complainant be required to furnish proof of the same. He denies from information and belief that complainant ever had any title to the property in question, or that she ever had control or possession of the same as owner thereof, or that she advanced and paid the

money for the same. He avers that said Miller bought the property and paid for it with his own money and took the fee-simple title to himself, and upon his death said real estate descended to the grantors in the deed to said Kirby as the only heirs-at-law of said Miller. He admits that said Williamson informed him of the existence of said deed to complainant and advised this defendant not to sell until the court had determined the question as to the validity of said deed, but upon consideration and examination made by this defendant he was convinced that said deed was invalid and was a device used to defraud the heirs-at-law of said Miller out of the property left them by their ancestors; whereupon he consulted with his coheirs, and they determined to carry out their contemplated sale notwithstanding the existence of said alleged deed, believing then, as they now believe, that they had a perfect right to sell said property.

This defendant says that the sale of the property was under
44 consideration before said Williamson informed him about said deed.

9. He denies that he ever learned that said John L. Miller had no right or title in the property in question at his death, or that he or his codefendants "set about to devise a scheme to defraud and cheat complainant and avail themselves of her property under the device or pretense of a *bona fide* purchaser or holders of negotiable notes to be given by such pretended purchaser and negotiated and discounted by such persons as they might be able to dispose of them to." He denies that there was any conspiracy, or that said Kirby was brought in to play any part whatsoever. He denies that "said Williamson did thereupon, with a full knowledge of complainant's title, cause the defendants Houchens, Goudy, and Miller to execute a deed conveying to the said Kirby," etc., etc. On the contrary, he says that said Williamson, being the solicitor for Mrs. Goudy and this defendant, and after said Williamson had learned of the existence of the pretended deed to complainant, expressly advised said Mrs. Goudy and this defendant not to complete any sale until the court had passed upon the pretended deed, but for reasons before given, together with their pressing need of money, they concluded to disregard said pretended deed and sell the property, which they accordingly did. He says that the sale was made to Mr. Kirby by this defendant as set forth in Mr. Kirby's answer; that said Williamson did not cause the conveyance to be made and had nothing to do with carrying it out—in fact, said Williamson was absent from the city in Louisville, Kentucky, for about two weeks while Mr. Kirby was having the title examined, and this defendant was
45 trying to close the sale and pass the deed and get the money and the notes; that he was acting as the duly authorized agent of Mrs. Houchens and Goudy in this transaction. He says that said sale was finally completed by his passing the deed to said Kirby and said Kirby paying the $3,000 in cash and delivering his three promissory notes for $3,000 each, which notes were secured by a deed of trust on the property; that said notes were endorsed by said Houchens, Goudy, and this defendant and passed off shortly

after the sale. Said sale was *bona fide*. This defendant did not inform said Kirby of the pretended deed, as this defendant has always been informed that the record would show the title to all property and exhibit all valid deeds. Said Kirby asked me who my attorney was, and on being informed that Mr. Williamson was acting for us he remarked that he would get Mr. Bailey or some other attorney to search the title for him.

10. He denies that said deed of trust was prepared in furtherance of any scheme to defraud and cheat the complainant or any one else, but says it was made in good faith to secure the aforesaid three notes; that said deed of trust was made to said Willoughby and Williamson without any consultation with them, but because they were the solicitors for the heirs, and for this reason this defendant had their names put in as the trustees.

11. Not having sufficient information, he is unable to admit or deny the larger part of this paragraph, but he denies that there was any conspiracy, scheme to defraud or cheat, or anything but a sale in good faith.

46 12. He admits the allegations of this paragraph as to the giving of the trust and recording the same.

13. He denies from information and belief that said Kirby well knew that complainant was the owner of the property, and that his grantors had no title, or that said John L. Miller had conveyed the property in his lifetime, etc., etc.

He further denies from information and belief every charge and specification contained in this paragraph, and says that he has already shown that the purchase was in good faith.

14. He is unable to admit or deny as to what passed between said Kirby and those who approached him. He says that it is "true that said Kirby paid $3,000 in money and $9,000 in three promissory notes" to this defendant, acting for himself and as attorney-in-fact of the defendants Houchens and Goudy. He denies "that said money or notes were delivered to said Williamson and Willoughby or to both — them." He denies all conspiracy. He denies that said Houchens, Goudy, and this defendant are financially irresponsible, and he also denies that the consideration for said property yet remains to be distributed.

15. He is unable to admit or deny the allegations of this paragraph, but from Mr. Kirby's answer this defendant believes them to be true.

16. He denies that the deed and trust are clouds upon complainant's title, as he does not believe that she ever had or that she has now any title to said property.

And, having fully answered, he asks to be hence dismissed with his reasonable costs in this behalf expended.

RICHARD H. MILLER.

L. CABELL WILLIAMSON,
Solicitor for Defendant Miller.

47 I do solemnly swear that I have *have* read the above answer by me subscribed and know the contents thereof, and that

the facts therein stated of my own personal knowledge are true, and that those stated upon information and belief I believe to be true.

RICHARD H. MILLER.

Subscribed and sworn to before me this 4th day of December, 1888.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Assistant Clerk.

48 *Answer of Defendant E. M. Houchens. Filed Dec.* 7, 1888.

Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WILLIAM W. KIRBY *et al.* } In Equity. No. 11382.

The separate answer of the defendant Elizabeth M. Houchens to the bill of complaint.

For answer she says:

1. She admits the allegations contained in the first paragraph.

2 & 3. From information and belief she denies every allegation contained in the second and third paragraphs, so far as they claim the ownership of the property in behalf of the plaintiff. The defendant also denies that the plaintiff furnished the money for the purchase of said property to John L. Miller, or that said Miller acted as trustee or in any other manner as the agent of plaintiff in the purchase of said property; but, on the contrary, from information received and which she believes to be true she says that said John L. Miller purchased said property with his own money and for himself, and that plaintiff had no part or parcel in said purchases, nor any interest whatsoever in said three lots or either of them.

4. From information received, and which she believes to be true, this defendant denies every allegation of the fourth paragraph, and calls for strict proof concerning the same.

5. She admits from information received that a deed pur-
49 porting to be the deed of said Miller and his wife was admitted to record on the 4th day of Oct., 1888, which deed bears date December 27th, 1883, but she denies the execution of said deed, or that said deed was ever intended to convey to the plaintiff the property in question, and asks that plaintiff be required to make proof of the execution and delivery of the said deed and the purpose for which it was delivered, if delivered at all, with all the circumstances attending the same. She believes, from all the circumstances, that this is an attempt to claim the property to which the plaintiff never had any title.

6. She admits the allegations as to the death and the leaving of his last will and testament as alleged in the sixth paragraph.

7. She admits that the seventh paragraph is a substantially correct relation of the facts touching the filing of the bill and its contents and of the answers with their contents.

8. This defendant denies that plaintiff ever had title to said real estate, or that she ever had possession and control of it under and by virtue of such title, or that she furnished the purchase-money, or that Miller was her trustee. From information received, she believes that said Willoughby & Williamson had the alleged deed exhibited to them by the attorney for plaintiff. She is unable to admit or deny any of the allegations about plaintiff's consultation with counsel or about said Willoughby taking a memorandum of said deed or of said Williamson suggesting an amendment to said bill, for the reason that she has no information on the subject.

9. She admits the execution of the deed, but she denies that it was done after learning that said John L. Miller had no right or
50 title to said property at the time of his death, or that she or any of her codefendants, so far as she is aware, ever "set about to devise a scheme to defraud and cheat complainant and avail themselves of her property under the device or pretense of a *bona fide* purchaser or holders of negotiable notes to be given by such pretended purchaser and negotiated and discounted by such persons as they might be able to dispose them to." She says that said sale was made in good faith through the defendant Richard H. Miller, who brought the same about and acted as agent of Mrs. Houchens and herself and who can and will answer fully as to the same.

It is true that she had heard of the existence of the deed, but she believed it to be a fraud, as she still believes. She denies that said sale was brought about through said Williamson or Willoughby, but says that the defendant Richard H. Miller, acting for himself and said Houchens and this defendant, procured the purchaser, made all the arrangements about completing the purchase, and finally did consummate the same; that sale was made in the utmost good faith, being confident that complainant had no right, title, or interest in said real estate. This defendant has never seen Mr. Kirby nor held any communication with him. Mr. Williamson, on hearing of our desire to sell, advised that we should wait until after the court had settled the case and declared the deed to the plaintiff fraudulent. An earnest effort was made, as defendant is informed, to ascertain if the deed was the deed of said Miller, for the purpose of conveying the property in question prior to the conveyance by the three defendants, but all attempts in this direction confirming the said three defendants that the thing was a fraud. She denies all conspiracy, fraud, or intent to defraud or cheat. She also denies that said Kirby was brought into said matter to play any part,
51 but says that he bought the property in good faith, paying therefor the sum of $12,000, the consideration mentioned in the deed, paying $3,000 in cash and giving his three promissory notes each for $3,000.

10. She admits the execution of the deed of trust and the making and delivery of the notes, but she denies that it was in furtherance

of any scheme to defraud or cheat complainant, as no such scheme had or has any existence in fact.

11. She is unable to admit or deny the allegation as to the relations existing between the defendants Williamson and Kirby or as to said Kirby's business, but she denies all conspiracy, fraud, or intent to cheat or defraud touching the transfer of said property to said Kirby.

12. She believes the allegations of the twelfth paragraph are true being as to the making, delivery, and recording of the deed and deed of trust.

13. She is unable to admit or deny the principal allegations of the thirteenth paragraph as to what Mr. Kirby did or did not know, but she feels confident that said Kirby had no knowledge of the deed in question.

14. She is unable to admit or deny the allegation in this paragraph as to what Mr. Kirby said when approached. She says that Mr. Kirby did pay the $3,000, and that he did make and pass his three promissory notes, each for $3,000, which notes the three defendants endorsed and passed off before the filing of this bill.

15. She believes the allegations of the fifteenth paragraph are true, as she knows nothing to the contrary.

52 16. She denies that said deed and deed of trust are clouds upon complainant's title. She says that complainant has no right or title to said property.

And, having fully answered, she asks to be hence dismissed with her reasonable costs in this behalf expended.

ELIZABETH M. HOUCHENS.

W. WILLOUGHBY,
Solicitor for Defendant E. M. Houchens.

I do solemnly swear that I have read the above answer by me subscribed and know the contents thereof, and that the facts therein stated of my own personal knowledge are true, and that those stated upon information and belief I believe to be true.

ELIZABETH M. HOUCHENS.

Subscribed and sworn to before me this 7th day of Dec., A. D. 1888.

R. J. MEIGS, *Clerk,*
By M. A. CLANCY, *Ass't Clerk.*

53 *Answer of Defendant L. C. Williamson. Filed Jun-* 12, 1889.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WILLIAM W. KIRBY *et al.* } In Equity. No. 11382.

The separate answer of the defendant L. Cabell Williamson to the bill of complaint.

For answer this defendant says:

1. He believes that the allegations of the first paragraph concerning the residence of the parties are true.

2. According to the information of this defendant he feels that he should deny the allegations of the second paragraph so far as they allege that the complainant ever purchased or furnished the money for the purchase of the real estate described in this paragraph and he does deny the truth of said allegations. He avers from information and belief that said John L. Miller not only purchased the property but furnished the money to do so, and that he took the fee-simple title to himself not as trustee or agent for any other person but for himself.

3. This defendant makes the same answer to the third paragraph as he did to the second paragraph.

4. From information and belief this defendant denies every allegation contained in this paragraph.

5. This defendant admits that a paper purporting to be a deed from said Miller and wife is in existence, but he does not believe that said deed is genuine or, if genuine, that it was ever de-
54 livered or intended to be delivered as a conveyance of said real estate, and, so believing, he asks that the complainant be required to furnish strict proof as to the allegations of this paragraph.

6. He admits the allegations of this paragraph as to the death of said Miller testate.

7. He admits the allegations of the seventh paragraph as to the filing of the bill, etc.

8. He admits that he was informed of the paper purporting to be a deed, and that it was shown to said Willoughby and to this defendant; and this defendant avers that he stated to said Duhamel, at the time of the showing of said deed, that said deed was not genuine, and that the whole transaction bore strong marks of fraud, and requested or inquired of said Duhamel why he did not place the deed on record; whereupon said Duhamel stated that he was not at liberty to talk about that matter, but that if this defendant would call at his office he would show the checks and other evidences of the genuineness of the transaction; that this defendant in company with another person called and saw said Duhamel on the steps of the building in which his office is and requested to be shown any

evidence he might have tending to show the genuineness of the transaction, when said Duhamel informed him that he did not have them in his office, but that he would write to Mr. Tallmadge, requesting him to bring them to his (said Duhamel's) office for this defendant's examination, and that so soon as they came this defendant should be notified, but although several weeks elapsed said Duhamel never notified this defendant or exhibited any evidence of the validity of the transaction. This defendant believes that
55 there was at least a month, if not six weeks, between the time of this request and the time of the sale.

This defendant further avers from what Duhamel said when showing the deed, and from his actions on that occasion this defendant got the impression, that the whole transaction was rotten and that said Duhamel was afraid to place the so-called deed upon record; and then, when he failed to exhibit what he said he had in his possession showing the *bona fides* of the transaction, this defendant was forced to the conclusion that there was something radically wrong about the so-called deed, which impressions and conclusions this defendant communicated to his clients as a reason why the court would sustain them in their claim to the property as set forth in their bill. This defendant says that his statement to said Duhamel was to this effect, that when he put the so-called deed on record then the bill would have to be amended.

9. This defendant denies each and every allegation contained in the ninth paragraph of the bill so far as they in any matter connect him with said transactions. He says that his clients have truthfully answered this paragraph. He avers that he did not cause his clients nor the other defendants to execute said deed or any of the papers; that he had nothing to do with the sale; that when his clients told him that they wanted to sell and were trying to do so, as they needed money, that he told them that they must not sell until the court had decided the case. He denies all conspiracy, fraud, cheating, or intent to cheat or defraud.

This defendant further avers that while the principal part of the transaction was taking place touching the sale to Kirby this
56 defendant was out of the city on business in Louisville, Kentucky, and in Ohio.

10. This defendan*d* again denies that he participated in any scheme to defraud and cheat complainant as alleged in the tenth paragraph of the bill. It appears from the trust placed on record that this defendant and said Willoughby are made the trustees to secure the notes therein described. This defend- says that the defendants have truthfully answered this paragraph showing how this defendant and said Willoughby came to be named as trustees.

11. It is true that the relations of the said Kirby and this defendant have been quite intimate, but since said Kirby has been employed in the city hall this defendant has not seen so much of him. It is also true that this defendant has acted as attorney and counsel for said Kirby in some of his suits and matters, but this defendant avers that said Kirby has also employed other counsel in some of

his cases, which cases were conducted entirely by said counsel and with which this defendant had nothing to do whatever.

This defendant further avers that in this matter he was not the counsel or attorney of said Kirby, nor did said Kirby apply to him to become such, either in searching the title or in any other way conducting the matter. He denies that there was any conspiracy so far as this defendant is concerned. He denies that he chose said Kirby or that said Kirby was chosen because of any friendship or intimacy existing between said Kirby and this defendant, and this defendant denies every other allegation of this paragraph so far as they relate to him. He says that said Kirby has sufficiently answered the same so far as they relate to him.

57 12. He admits the allegations of the twelfth paragraph.

13. From information and belief this defendant denies the allegations of the thirteenth paragraph of the bill.

14. Having no information on the subject this defendant is unable to admit or deny what said Kirby replied when approached on the subject of the purchase or what he admitted as to the time of the closing of the transaction or what he stated as to the $3,000 cash payment or the giving of the three notes. The record shows that the answers in equity cause 11204 were filed prior to the recording of said Kirby's deed. This defendant denies each and every allegation of this paragraph except as above set forth.

15. He believes that the allegations of the fifteenth paragraph are true except that part which calls the sale "pretended."

16. From information and belief this defendant says that the plaintiff has no title to the said real estate.

And, having fully answered, this defendant asks to be hence dismissed.

L. CABELL WILLIAMSON.

I do solemly swear that I have read the above answer by me subscribed and know the contents thereof, and that the facts therein stated of my own personal knowledge are true, and that those stated upon information and belief I believe to be true.

L. CABELL WILLIAMSON.

Subscribed and sworn to before me this 12th day of January, A. D. 1889.

R. J. MEIGS, *Clerk.*
R. J. MEIGS, JR.,
Assistant Clerk.

58 *Court Proceedings.*

January term, 1889.

The January term for equity, 1889, commences its session this 2nd day of January, 1889, pursuant to adjournment, Mr. Justice Cox, presiding.

* * * * * * *

WEDNESDAY, *January 23rd*, 1889.

Court meets pursuant to adjournment.

* * * * * * *

MARIA E. TALLMADGE
vs.
W. W. KIRBY *et al.* } 11382, Equity Docket 28.

(Endorsement on amendment to bill:) Leave is hereby given to file this amendment to bill. W. S. Cox, justice.

59 *Amendment to Bill of Complaint. Filed Jan.* 23, 1889.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
W. W. KIRBY *et als.* } In Eq. No. 11382.

Now comes the complainant, and by leave of the court first had and obtained, and amends her bill of complaint as follows:

17. To the end therefore that the defendants may, upon their several and respective corporate oaths and according to the best and utmost of their several and respective knowledge, remembrance, and information and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereafter numbered and set forth as by the note hereunder written they are respectively required to answer—that is to say:

1. To whom was the money and notes delivered and held by; where the $3,000 in cash was deposited or kept; when the notes were disposed of; who bought the notes; what the party purchasing paid for them; whether such sale and transfer was absolute or conditional; who has the notes now, and who had them when each and every defendant last knew of their whereabouts; who held the notes and also the monies pending the distribution of the proceeds of sale among the defendants?

2. What was paid and distributed to each and every of the defendants?

3. Who was present when Kirby paid the notes and money
60 in Williamson's office, and what was done with the money and notes after Kirby delivered the same in said office, and to whose possession and care committed pending the distribution among the defendants?

4. When the notes were endorsed by Goudy and Houchens, and in whose care and possession they were in at the time of such endorsement, who negotiated the disposition, sale, and cashing of them, and how purchase-money paid, cash or check, and to whom?

5. If Williamson knew of the beginning of the negotiation of sale and was then in Washington and was also present at the closing of the sale and the delivery of the money and notes by Kirby? If

Willoughby was here when the money and notes were paid by Kirby?

6. If Kirby approached Williamson, after he had been told of the property by Miller, and made any inquiries as to the property or title or otherwise, and if Williamson did not tell him of complainant's claim or deed or possession? If Williamson had any talk with Bailey in regard to the title, complainant's deed, or her possession, and if Bailey was not advised and informed pending the negotiation of complainant's claim of title, deed, or of her possession from the defendants or some other source?

7. Who told Kirby that the house and premises were occupied by complainant, and if he enquired of any one as to how she held and by what right, and of whom he enquired and what information he got, and if he ever told his attorney, Bailey, of her occupancy?

8. Of whom did Kirby's attorney learn the amount of debt
61 on deed of trust, and to whom?

N. B.—All the defendants are required to answer the 1st, 2d, 3d, and 4th interrogatories. The defendants Willoughby & Williamson & Kirby are to answer the 5th interrogatory. The defendants Williamson and Kirby to answer the 6th and 8th, and defendants Kirby the 7th interrogatory.

S. S. HENKLE & W. K. DUHAMEL,
Solicitors for Compl't.

62 *Subpœna.*

Issued January 23rd, 1889.

In the Supreme Court of the District of Columbia, January 23rd, 1889.

MARIA E. TALLMADGE, Complainant,
against
WILLIAM WALLACE KIRBY *et al.*, Defendants. } No. 11382, Equity Docket.

The President of the United States to William Wallace Kirby, L. Cabell Williamson, Westel Willoughby, Elizabeth M. Houchen, Ella A. Goudy, and Richard Henry Miller, defendants:

You are hereby commanded to appear in this court at its first special term occurring ten days after service of this subpœna and answer the exigency of the amended bill under pain of attachment and such other process of contempt as the court shall award.

Witness E. F. Bingham, chief justice.

[SEAL.] R. J. MEIGS, *Clerk*,
By J. JAY CAMP, *Ass't Clerk.*

63 MEMORANDUM.—That the defendant- herewith served *is* to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's Return.

Served William Wallace Kirby, Westel Willoughby, January 26th, 1889; L. Cabell Williamson and Richard Henry Miller January 28th, 1889; Elizabeth M. Houchen and Ella A. Goudy, not to be found, Feb'y 5, 1889.

A. A. WILSON, *Marshal.*

64 *Answer of Defendant Willoughby to a Bill Filed Feb'y 6, 1889.*

Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WM. W. KIRBY *et al.* } In Equity. No. 11382.

The answer of the defendant W. Willoughby to the interrogatories propounded to him in the amendment to the bill of complainant filed in the above-entitled cause.

For answer to the said interrogatories I say as follows:

1. I have no knowledge, information, or belief as to the matters inquired of in the first interrogatory.

2. I have no knowledge, information, or belief as to the matters inquired of in the second interrogatory.

3. I have no knowledge, information, or belief as to the matters inquired of in the third interrogatory.

4. I have no knowledge, information, or belief as to the matters inquired of in the fourth interrogatory.

5. I have no knowledge as to whether Williamson knew of the beginning of the negotiation of sale, but that he was then in Washington; but my information is that he did not know of such beginning of the negotiation. I have no knowledge as to whether he was present at the closing of the sale and the delivery of the money and notes by Kirby. I was not in the city of Washington when, as I have been informed, the money and notes were paid by Kirby, but was in West Virginia, as stated in my answer to the original bill.

(Signed) W. WILLOUGHBY.

Subscribed and sworn to before me this 6th of Feb'y, 1889.

(Signed) R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS, *Ass't Clerk.*

65 *Answer of Defendant Wm. W. Kirby to a Bill Filed Feb'y* 21, 1889.

In the Supreme Court of the District of Columbia.

MARIA E. TALMADGE
vs. } Eq. 11382.
WM. W. KIRBY *et al.*

The answer of the def't Wm. W. Kirby to the amendment to the bill of complaint filed in the above-entitled cause.

For answer to said amendment and to the interrogatories contained therein I say as follows:

1. To the first interrogatory: I handed the money, notes, and deed of trust to the def't Miller, in Williamson's office, in the presence of Mr. Williamson and Mr. Westerfield, who is spoken of in paragraph 16 of my answer to the original bill herein, and do not know what became of them after.

Neither do I know where the $3,000.00 was deposited or kept, nor when the notes were disposed of, nor who bought them, nor what was paid for them, nor whether the sale was absolute or conditional.

I do not know who has the notes now, and the last time I saw them was when I delivered them to the def't Miller, as heretofore stated, and I do not know who held the notes and money pending the distribution of the proceeds of sale.

2. To the second interrogatory I answer that I do not know what was paid to each and every of the defendants nor any one of them except that nothing was paid to me.

3. To the third interrogatory I answer that, as before stated, Mr. Williamson and Mr. Westerfield were present in Williamson's
66 office when I delivered the notes, deed of trust, and money to the def't Miller, and I do not know into whose possession they passed after my delivery of them or into whose care they were committed pending the distribution thereof among the defendants.

4. To the fourth interrogatory I say that I do not know when Goudy and Houchens indorsed said notes or in whose possession they were at the time of such indorsement, nor do I know who negotiated the disposition, sale, and cashing of said notes, nor what the purchasing party paid for them, nor to whom he paid, nor whether the payment was by check or in cash.

5. To the fifth interrogatory I answer: I do not think that Williamson knew of the beginning of my negotiations for the purchase of the property, I never consulted him or talked with him about the matter, and do not know whether he was in the city at that time or not. Williamson was not present at the closing of the sale, but after the sale had been closed he was present, and, as before stated, the notes and money were delivered to Miller in the presence of him and Westerfield.

I do not know whether the def't Willoughby was here or not

when I paid the notes and money to Miller. I never saw Willoughby during the entire transaction, and had no knowledge that he represented one of the defendants or that he had the slightest connection with the matter.

6. To the sixth interrogatory I answer that I did not approach Williamson after I was told of the property by Miller and made inquiry as to the property or title or otherwise, and Williamson did not tell me of complainant's claim or deed or possession.

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I do not know whether Williamson had any talk with Bailey or not in regard to complainant's title or deed or her possession, nor do I know whether or not Bailey was advised and informed pending the negotiations of complainant's claim of title or deed or of her possession by any of the defendants or any other person or from any other source except that I never so advised and informed him. All that I know is that I employed Mr. Bailey to report the title for me, and he reported that I could take good title to the property, and upon his report I bought.

7. To the seventh interrogatory I answer that no one told me that the house and premises were occupied by complainant prior to my purchase of the property.

When requested by the def't Miller to purchase the property, I twice visited the premises, and, either on one of these visits or from the def't Miller, I received the impression that the widow of John L. Miller, deceased, was in the possession and occupancy thereof. This impression remained with me until after my deed had been admitted of record. Two days thereafter, to wit, on the 3 day of October, 1888, as I desired to advise Mrs. Miller that I had become the owner of the property and to fix upon the rent therefor, I called on the def't Williamson and inquired of him the first name of Mrs. Miller, and, very much to my surprise, was informed by Williamson that Mrs. Miller did not reside there, but that a person named Talmadge, whose first name he did not know, occupied the premises. Thereupon I consulted the city directory, and, finding that Mr. —— Talmadge lived there, I gave him the notice spoken of in my answer to the bill.

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As I supposed that Mrs. Miller occupied the premises, I did not inquire by what right she held or under whom, and I never talked with Mr. Bailey upon the subject of the occupancy of the premises except to tell him that the widow was in possession thereof.

8. To the eighth interrogatory I answer that I do not know of whom Mr. Bailey, my attorney, learned the amount of debt in deed of trust.

And now having made full, true, direct, and perfect answers unto each and every of the interrogatories to me propounded, according to the best of my knowledge, remembrance, information, and belief, I again pray to be hence dismissed with my reasonable costs in this behalf sustained.

(Signed) WM. W. KIRBY.

WM. T. BAILEY,
Sol. for Def't Kirby.

I do solemnly swear that I have heard read the foregoing answers by me made and subscribed to the eight interrogatories propounded in the amendment to the bill herein, and that said answers and the matters and things therein contained upon my personal knowledge are true, and the matters and things therein stated upon information, remembrance, and belief I believe to be true.

(Signed) WM. W. KIRBY.

Subscribed and sworn to before me this 21 day of February, 1889.

(Signed) R. J. MEIGS, *Cl'k*,
By L. P. WILLIAMS, *Ass't Cl'k*.

69 *Answer of Def't L. C. Williamson to a Bill Filed May* 3, 1889.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
W. W. KIRBY *et al.* } Eq. 11382.

The answer of L. Cabel Williamson to the interrogatories propounded to him in the amended bill.

1. To the first interrogatory: The money and notes were delivered to and held by defendant Miller. I do not know where the $3,000 in cash was deposited or kept by said Miller. I do not know, except from the answer of said Miller, when the notes were disposed of, nor who bought them, nor whether the sale and transfer was absolute or conditional, nor who had them when each and every defendant last knew of their whereabouts. I know that the money and notes were turned over to said Miller.

2. Second interrogatory. I do not know, except from the answer of said Miller, what was paid and distributed to each and every of the defendants.

3. Third interrogatory. Kirby, Westerfield, and Miller; I believe no one else was present. The money and notes were handed to said Miller by said Kirby in my office and in the presence of the persons named. No explanation was given by said Kirby and Miller as to what said money and notes were for. Said Kirby immediately withdrew and said Miller shortly followed. I have
70 no other information on the remainder of this interrogatory, except that derived from said Miller's answer to this interrogatory.

4. Fourth interrogatory. I have no knowledge or information as to the subject-matter of this interrogatory except such as is derived from the sworn answer of said Miller to this interrogatory.

5. Fifth interrogatory. I did not know of the beginning of negotiations of sale. I was out of the city from the 16th day of September, 1888, until, I think, the 29th day of September, 1888; part of this time I was in attendance on the General Masonic Relief Association of the United States and Canada, at Louisville, Ky.; a part

of the time I spent in Cincinnati, Ohio, and the remainder in going to and coming from said places. I was present when the money and notes were paid, as I have already answered. I do not believe Mr. Willoughby was in the city at that time.

6. Sixth interrogatory. Kirby did not approach Williamson after he had been told of the property by Miller or make any inquiries as to the property or title until after said Kirby had placed his deed upon record and he had been informed of the claim of the complainant, nor did I tell him of complainant's claim or deed or possession until after the question of title had been raised as aforesaid, nor in fact had I any opportunity to do so. I had no talk whatever with Bailey in regard to the title, complainant's deed, or her possession. I do not know whether or not Bailey was ad-
71 vised and informed pending the negotiation of claimant's claim of title, deed, or of her possession. I know that I did not so advise and inform him; in fact I do not now recollect either seeing or conversing with him during the negotiation or the searching of said title.

8. Eighth interrogatory. I do not know of whom Kirby's attorney learned the amount of debt in deed of trust.

(Signed) L. CABELL WILLIAMSON.

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

(Signed) L. CABELL WILLIAMSON.

Subscribed and sworn to before me this 3rd day of May, A. D. 1889.

(Signed) R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk*.

72 *Answer of Defendant R. H. Miller to a Bill Filed May* 3, 1889.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
W. W. KIRBY *et al.* } Equity. No. 11382.

The answer of the defendant Richard H. Miller to the interrogatories propounded in the amended bill.

1. To the first interrogatory I say: The money and notes were delivered to and held by me. $3,000 was not deposited in bank. That was my interest in the property. As our contract with the lawyers before institution of the equity suit against Lola Miller was twenty-five per cent. of whatever might be recovered, that would leave coming to Mrs. Houchens the proceeds of one note, to Mrs. Goudy proceeds of one note, and to our lawyers proceeds of the

other notes. The notes were disposed of by me on this basis. Just after the sale and before the institution of this suit, without any consultation with or knowledge by my codefendants the party who was buying them would not pay the money over without an examination as to title, but before the money was paid over this suit was instituted and finally the notes thrown back on my hands, and I have them now in my possession. There was to be paid for said notes their face value, less a small discount for examination, etc. Said sale was to have been absolute and unconditional.

2. To second interrogatory: I have fully answered this interrogatory already.

73 3. Third interrogatory. After the transaction had all been closed except the mere turning over the money and notes Mr. Kirby suggested that he would meet me at Mr. Williamson's office and pay the money and notes, as he wanted a witness, and, as Mr. Williamson was my attorney and also the attorney of Mrs. Goudy, it would be right for him to be present. Mr. Kirby and myself agreed upon a time when the money should be paid and the notes delivered. This was done without any arrangement of said Williamson. At the time designated I was sitting in Mr. Williamson's office, and Mr. Westerfield was with me, when Mr. Kirby came in —, without sitting down or holding any conversation with any of us, except to speak, said to Mr. Williamson that he "wanted to pay to Mr. Miller $3,000 in money and deliver him three notes for $3,000 each in said Williamson's presence," which he did and immediately left the room without further explanation.

I have already answered the remainder of this interrogatory.

4. Fourth interrogatory. The notes were endorsed by Goudy, Houchens, and myself while they were in my possession, shortly after the completion of the sale and before the filing of this suit. I have already answered the remainder of this interrogatory.

It is but justice for me to say that this meeting in Mr. Williamson's office was without any previous arrangements with him, but was brought about by Mr. Kirby and myself; that said Williamson had expressly stated to Mrs. Goudy and myself when we talked

74 about selling that no sale ought to be made until after the court had passed upon the validity of the alleged deed to the plaintiff in this case, and consequently he had nothing to do with it.

RICHARD H. MILLER.

I do solemnly swear that I have read the foregoing answer, by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

RICHARD H. MILLER.

Subscribed and sworn to before me this 1st day of May, A. D. 1889.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

75 *Answer of Defendant E. M. Houchens to a Bill Filed May* 13, 1889.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
W. W. KIRBY *et als.* } In Equity. No. 11382.

The answer of the defendant E. M. Houchens to the amend- bill and interrogatories.

1. To first interrogatory: I was not present when the notes and money were delivered; I have been informed that they were delivered to codefendant Miller; I do not — where the $3,000 was deposited or kept by said Miller; I do not know when the said notes were disposed of, or who bought them, or what was paid for them, or whether the sale and transfer was absolute or conditional. I know that the notes were endorsed by myself, Mrs. Goudy, and said Miller, and turned over to him as our agent to negotiate, which I was informed had been done. Since filing my answer to the original bill I have learned that the person to whom the notes were passed declined to keep them. Said Miller held the said notes, and since their return as aforesaid has had the possession of them, as I believe.

2. Second interrogatory. I have not received anything on account of said sale personally, nor do I believe Mrs. Goudy has; but said Miller, acting as our agent, received said money and said notes (on my personal knowledge as to the notes and on information as to the money).

3. Third interrogatory. I do not know who was present when the money and notes were paid. I have been informed that Mr. Kirby, Mr. Miller, Mr. Williamson, and Mr. Westerfield were present. I have already answered the remainder of this interrogatory.

4. The fourth interrogatory. I do not remember the date when the notes were endorsed by Mrs. Goudy and myself, but it was shortly after the closing of the transaction and prior to the institution of this suit. At the time of the endorsement they were in the possession of Mr. Miller, who said that he had a party who would take them and pay us their face value, less a small discount; Mr. Miller can explain why we did not get the money for them.

E. M. HOUCHENS.

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof, and the facts therein stated upon my personal knowledge are true, and those stated
76 upon information and belief I believe to be true.

E. M. HOUCHENS.

Subscribed and sworn to before me this 11th day of May, A. D. 1889.

[SEAL.] C. M. WHITE,
Notary Public.

77 *Answer of Defendant Ella A. Goudy to a Bill Filed May* 13, 1889.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
W. W. KIRBY *et al.* } Equity. No. 11382.

The answer of the defendant Ella A. Goudy to the amended bill and interrogatories.

1. To first interrogatory: I was not present when the notes and money were delivered; I have been informed that they were delivered to codefendant Miller; I do not know where the $3,000 was deposited or kept by said Miller; I do not know when the notes were disposed of, or who bought them, or what was paid for them, or whether the sale and transfer was absolute or conditional; I know that the notes were endorsed by myself, Mrs. Houchens, and said Miller, and turned over to him as our agent to negotiate, which I was informed had been done. Since filing my answer to the original bill I have learned that the person to whom the notes were passed declined to keep them. Said Miller held the said notes, and since their return as aforesaid has had the possession of them, as I believe.

2. Second interrogatory. I have not received anything on account of said sale personally, nor do I believe Mrs. Houchens has; but said Miller, acting as our agent, received said money and said notes (on my personal knowledge as to the notes and on information as to the money).

78 3. Third interrogatory. I do not know who was present when the money and notes were paid. I have been informed that Mr. Kirby, Mr. Miller, Mr. Williamson, and Mr. Westerfield were present. I have already answered the remainder of this interterrogatory.

4. As to the fourth interrogatory: I do not remember the date when the notes were endorsed by Mrs. Houchens and myself, but it was shortly after the closing of the transaction and prior to the institution of this suit. At the time of the endorsement they were in the possession of Mr. Miller, who said that he had a party who would take them and pay us their face value, less a small discount. Mr. Miller can explain why we did not get the money for them.

(Signed) ELLA A. GOUDY.

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof, and that the facts therein

stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

(Signed) ELLA A. GOUDY.

Subscribed and sworn to before me this fourth day of May, A. D. 1889.

(Signed) JASPER M. BERRY, JR.,
[SEAL.] *Notary Public.*

79 *Joinder of Issue on Ans. of Willoughby, Williamson, and Goudy. Filed May* 20, 1889.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WILLIAM W. KIRBY *et als.* } Eq. 11382.

The complainant joins issue on original and amended answers of the defendants Willoughby, Williamson, Goudy, and—

S. S. HENKLE &
W. K. DUHAMEL,
Sol'rs for Compl't.

80 *Exceptions to Answers of Def't Miller to Interrogatories. Filed May 20th,* 1889.

In the Supreme Court of the District of Columbia.

Filed May 20th, 1889.

MARIA E. TALLMADGE
vs.
WILLIAM W. KIRBY *et al.* } 11382. Equity.

The complainant prays leave to except to the answers of the defendant Miller to the following interrogatories in the amendment to the bill:

1. For that the defendant fails to answer who the party was that bought the notes.

2. For that the said answers to the interrogatories *is* in other particulars insufficient.

S. S. HENKLE AND
W. K. DUHAMEL,
Sol'rs for Compl't.

81 *Exception to Answers of Kirby to Interrogatories. Filed May 20th*, 1889.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WILLIAM W. KIRBY *et al.* } 11382. Equity.

The complainant prays leave to except to answers of the defendant Kirby to the following interrogatories in the amendment to the bill.

6. For that defendant fails to answer as to whether Williamson had any talk with Bailey in regard to the title, complainant's deed, or her possession, and if Bailey was not advised and informed pending the negotiation of complainant's claim of title, deed, or of her possession from the defendants or some other source.

8. For that defendant fails to answer when his attorney learned the amount of debt in deed of trust and of whom.

For that the said answers to the interrogatories *is* in other particulars insufficient.

S. S. HENKLE AND
W. K. DUHAMEL,
Sol'rs for Complainant.

82 *Joinder on Answer of Houchens. Filed May* 27, 1889.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WILLIAM W. KIRBY *et als.* } 11382, Eq. Doc. —.

The complainant joins issue on the original answer and answer to amendment to bill of the defendant Houchens.

S. S. HENKLE,
W. K. DUHAMEL,
Sol'rs for Pl'tiff.

83 *Motion Requiring Def't Miller to Deposit Notes in Registry. Filed May 27th*, 1889.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WILLIAM W. KIRBY *et al.* } Equity. 11382.

Now comes the plaintiff, by her solicitors, and moves the court that the defendant Richard H. Miller deposit in the registry of the

court the notes in his possession of William W. Kirby and mentioned in the proceedings to abide the result of this suit.

S. S. HENKLE,
W. K. DUHAMEL,
Sol'rs for Pl'ff.

Please take notice that on Friday, the 31st day of May, 1889, we will, at the opening of the equity court or as soon thereafter as counsel can be heard, move the court as above.

S. S. HENKLE,
W. K. DUHAMEL,
Sol'rs for Plaintiff.

84 *Joinder of Ans. to Am. Bill of Houchens, Kirby, and Miller. Filed May* 31, 1889.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WM. WALLACE KIRBY *et als.* } 11382.

The complainant joins issue upon the answers and answers to amended bill of the defendants Houchens, Kirby, and Miller.

S. S. HENKLE,
W. K. DUHAMEL,
Sol'rs for Compl't.

85 *Order Overruling Exceptions to Answers & Motions. Filed May* 31*st*, 1889.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WILLIAM W. KIRBY *et al.* } Equity. 11382.

This cause coming on for exceptions to the amended answers of Kirby and Miller and motion of plaintiff to have defendant Miller deposit the notes in the registry of the court and motion of defendant Kirby for surety for rent, and being argued by counsel and considered by the court, it is therefore this 31st day of May, 1889, adjudged — ordered that the exceptions aforesaid and the several motions be, and are hereby, overruled.

W. S. COX, *Justice.*

86 *Motion that Compl't Give Bond for Payment of Rent. Filed May* 31, 1889.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WM. WALLACE KIRBY *et al.* } Equity. 11382.

And now, to wit, on this 28th day of May, 1889, comes the defendant Wm. Wallace Kirby, by his solicitor, Wm. T. Bailey, and moves the court to pass an order herein requiring the complainant, Maria E. Tallmadge, to enter into a bond herein, with security or securities to be approved by the court, for the payment of rent to the defendant Wm. Wallace Kirby for her occupancy of the premises described in these proceedings from the 1st day of October, 1888, until a final decree shall be passed in this cause; the condition of the obligation of the bond to be such that if the bill of complainant herein shall not be dismissed as against the said defendant Kirby, then the obligation to be void and of no effect; otherwise to be and remain in full force and intent.

WM. T. BAILEY,
Sol. for Def't Kirby.

87 To Messrs. S. S. Henkle and Wm. E. Duhamel, solicitors for complainant:

Please take notice that on Friday next, the 31st day of May instant, at the hour of 10 o'clock a. m., or as soon thereafter as counsel can be heard, I shall in the equity court call up the foregoing motion.

WM. T. BAILEY,
Sol. for Defendant Kirby.

I hereby acknowledge service this 28th day of May, 1889, of copy of the foregoing motion and notice.

W. K. DUHAMEL,
Of Counsel for Complainant.

88 *Motion to Limit Time to Take Testimony. Filed January 13th,* 1890.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
W. W. KIRBY *et al.* } No. 11382. Equity.

And now, to wit, on this 9th day of January, A. D. 1890, comes the defendant W. W. Kirby, by Wm. T. Bailey, his solicitor, and moves the court to limit the time within which the testimony in this cause may be taken.

WM. T. BAILEY,
Sol. for Defendant Kirby.

To Messrs. Henkle & Duhamel, for complainant, and Messrs. Willoughby & Williamson, for defendants:

Take notice that at the opening of the court on Tuesday morning, January 14th, 1890, or as soon thereafter as counsel can be heard, I shall call the foregoing motion to the attention of the court.

WM. T. BAILEY,
Sol. for Def't Kirby.

89 We hereby acknowledge service this 9th day of January, A. D. 1890, of copy of the foregoing motion and notice.

W. K. DUHAMEL,
Sol. for Compl't Tallmadge.
W. WILLOUGHBY,
Sol. for Defendant Houchens.
L. CABELL WILLIAMSON,
Sol. for Def'ts Miller & Goudy.

90 *Time to Take Testimony Limited. Filed January 14th*, 1890.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WM. W. KIRBY *et al.* } Equity. No. 11382.

This cause came on this day to be heard on the motion of the defendant Kirby to limit the time for the taking of testimony by all the parties hereto, and upon consideration thereof it is by the court this 14th day of January, A. D. 1890, ordered that the complainant have fifteen days from the date hereof wherein to complete her testimony-in-chief; that the defendants jointly have the next succeeding thirty days in which to take their testimony, and that thereafter the complainant have the succeeding ten days in which to take testimony in rebuttal.

By the court:

W. S. COX, *Justice.*

91 & 92 *Entry in Order Book* 11, *Page* 141.

TALLMADGE
vs.
KIRBY *et al.* } 11382.

S. S. Henkle & W. K. Duhamel, Cabell Williamson, W. T. Bailey

The clerk will please enter this cause upon the calendar for trial. May 21, '90.

W. K. DUHAMEL,
Sol'r for Plaintiff.

Calendared as ordered.
'90, 5, 23.

BY THE CLERK.

93 In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WILLIAM W. KIRBY *et al.*

GENTLEMEN: Please take notice that I will, on Monday next, June 10th, 1889, at 3 o'clock p. m., at the office of W. K. Duhamel, Esq., No. 460 Louisiana avenue northwest, Washington, D. C., proceed to take the testimony of such witnesses on behalf of the complainant as may be produced before me.

You are requested to be present.

Respectfully,

(Signed) EDWIN FORREST,
Examiner in Chancery.

June 8, 1889.

To William T. Bailey, solicitor for defendant Kirby; L. Cabell Williamson, solicitor for defendants *Cabell* and Miller; W. Willoughby, solicitor for defendant Houchens.

Service accepted by receipt of copy of above.

(Signed) WM. BAILEY.
" L. CABELL WILLIAMSON.
" W. WILLOUGHBY,
Per W. F. W.

94 (Copy.)

CITY, *June 8th*, 1889.

W. K. Duhamel, Esq., attorney.

DEAR SIR: "L. C." and myself are obliged to be out of the city on Monday. Will you please arrange the meeting at your office for Tuesday at same hour instead of Monday, as agreed, and much oblige,

Yours truly, H. H. TALLMADGE.

95 WASHINGTON, D. C., *June* 10, 1889—3 o'clock p. m.

Met pursuant to notice hereto attached and adjourned till tomorrow (Tuesday, June 11, 1889), at three o'clock p. m.

EDWIN FORREST,
Examiner in Chancery.

TUESDAY, *June* 11, 1889—3 o'clock p. m.

Met pursuant to adjournment and adjourned until Thursday next (June 13th, 1889), at three o'clock p. m.

EDWIN FORREST,
Examiner in Chancery.

THURSDAY, *June* 13, 1889—3 o'clock p. m.

Met pursuant to adjournment.

Present: Messrs. Henkle and Duhamel, solicitors for the complainant; Messrs. Bailey and L. C. Williamson, solicitors for the defendants, and the examiner.

Whereupon LEWIS C. TALLMADGE, a witness produced on behalf of the complainant, of lawful age, being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. DUHAMEL:

Question. What relation are you to Mrs. Maria E. Tallmadge, who is the complainant in this cause?

96 Answer. She is my sister-in-law.

Q. Please tell us if you have any knowledge in regard to the purchase by Mrs. Tallmadge, the complainant, of lots 76, 77, and 78, in square number 239, in this city.

A. I knew of the purchase; yes.

Q. Have you any knowledge of the payment of the money or any money on account of these lots?

A. I have knowledge of the payment of the first five thousand dollars.

Q. By whom was the money paid, to your knowledge?

A. I gave a check for the amount of five thousand dollars to John L. Miller.

Q. Have you got the check?

A. Yes, sir.

Q. Have you got the check here?

A. Yes, sir; I have (producing check).

Q. Is that the check you passed to Mr. Miller?

A. Yes, sir.

Q. Is that his indorsement? Do you know his handwriting?

A. That is his indorsement.

The solicitors for the complainant here offered the said check in evidence and the same is accordingly marked as "Complainant's Exhibit L. C. T. No. 1," and returned with this deposition.

Q. What is Miller's first name?

A. John L. Miller.

Q. Did Mr. Miller ever repay that money to you?

A. No, sir.

Q. Was this his money that you advanced to him?

97 A. No, sir.

Q. And for what purpose did you hand him this check?

A. For the purpose of making the first payment on the property.

Q. For whose benefit?

A. For the benefit of Mrs. Tallmadge.

Q. Do you know how the remaining purchase-money for these lots was provided for?

—. ——.

Q. Do you remember the date of that transaction?

A. The check is dated the 6th day of September, 1883. (The check is dated the 8th day of September, 1882.)

Q. Do you know how soon after that Mrs. Tallmadge, the complainant, took possession of those premises?

A. Well, I do not know the exact date, but it was very soon afterwards. I know because I was here stopping at the house with her.

Q. How was it built? State how high, if you know.

A. Two-story basement, mansard roof, brick dwelling.

Cross-examination.

By Mr. BAILEY:

Q. You are a brother of the husband of Maria E. Tallmadge, are you not?

A. I am.

Q. Where were you when this check was made?

A. City of Washington.

Q. On what bank is this check drawn?

A. Preston, Kean & Company, Chicago.

Q. Were you residing in Chicago at that time?

A. I was.

Q. This check was given to John L. Miller?

A. Yes, sir.

98 Q. And collected by him?

A. I suppose it was. It was paid through the bank. I know his indorsement.

Q. Did you owe Miller money at the time?

A. No, sir.

Q. Why did you give him this check?

A. At the request of Mrs. Tallmadge.

Q. Did you owe Mrs. Tallmadge money at that time?

A. No, sir; I did not.

Q. You did not?

A. No, sir; I did not.

Q. Why, then, should you pay John L. Miller five thousand dollars at the request of Mrs. Tallmadge if you did not owe her anything?

A. I loaned her the money.

Q. You did?

A. Yes, sir.

Q. Has she since repaid you?

A. She has.

Q. When?

A. 1887.

Q. By check or otherwise?

A. By money.

Q. Cash?

A. Yes, sir.

Q. Have you any idea where she obtained the money that she paid you?

A. No, sir; I have not. I do not know anything about it (other than I believe Mr. Eddy obtained it as proceeds of some stock).

99 Q. At the time that you loaned this money—paid this money to Miller at the request of Mrs. Tallmadge—you say that you were not indebted to her?

A. No, sir.

Q. Was it at that time regarded as a loan to her?

A. It was.

Q. Did you take any security from her whatever?

A. No, sir.

Q. And she held that money, you say, for at least five years before repaying you?

A. Yes, sir.

Q. Did you in the meantime ask her for any security?

A. No, sir.

Q. Did you know of any prospects that she had of any way of obtaining money in order to repay you?

A. Yes, sir; I knew she owned this property.

Q. How did you know it?

A. Because the deed was made to her.

Q. Did you read it?

A. I saw the deed; it was in my handwriting; I had it in my hand.

Q. How did you get it in your hand?

A. It was in my handwriting.

Q. The deed also was in your handwriting?

A. The deed from Miller to Mrs. Tallmadge was in my handwriting; that is what I mean.

Q. That was in 1883?

A. Yes, sir.

Q. That was nine months after this check was given?

A. Yes, sir.

100 Q. At the time at which you gave this check—the check that has been offered in evidence—to Miller for five thousand dollars as a loan to Mrs. Tallmadge what security had you from Mrs. Tallmadge or any other person on her account for the five thousand dollars?

A. I had no security whatever.

Q. Did you know of any prospect that she had of ever repaying you the money?

A. I took the chances of that.

Q. Do you know what amount of money Mrs. Tallmadge had agreed to pay for that property?

A. Yes; I heard that it was to be nine thousand dollars; I think nine thousand or ten thousand dollars. This five thousand dollars was the first payment.

Q. Did you understand at the time how the other payment was to be made?

A. No, sir.

Q. And when?

A. No, sir.

Q. Then, at a hazard, you put out five thousand dollars on the piece of property purchased of Miller, as you have already testified,

on behalf of Mrs. Tallmadge, without any knowledge whatever on your part how she intended or would be ever able to pay the remainder of it?

A. I saw fit to loan to my sister-in-law five thousand dollars.

Q. You have said that the deed from Miller to your sister-in-law in June, 1883, was in your handwriting?

A. I do not remember the date; I know the deed from Miller to my sister-in-law was in my handwriting.

101 Q. Is it the deed that was on the 4th day of October last admitted of record?

A. I can tell by seeing it.

Q. You do not know?

A. I do not know any dates, but I can tell by looking at the deed.

(The deed was here shown the witness.)

WITNESS: Yes, sir; that is my handwriting.

The solicitors for the complainant here offer in evidence the said deed, and the same is accordingly marked as "Complainant's Exhibit L. C. T. No. 2" and returned with this deposition.

Q. Do you remember that a deed was prepared by you in your handwriting for Mrs. Maria E. Tallmadge?

A. Yes, sir.

Q. Was it in June, 1883?

A. I do not remember when it was prepared.

Q. You think that was the deed (referring to Exhibit L. C. T. No. 2)?

A. Yes; I know that is the deed.

Q. Do you know when it was acknowledged?

Gen'l HENKLE: The deed will show.

A. I do not know. I can tell by looking at it.

Mr. BAILEY: The witness has looked at it, but refuses to answer. He ought to know whether it was prepared on the day it was acknowledged or not. (To witness:) At whose request was that deed prepared?

A. I do not know whether my sister-in-law requested me or not. I do not remember anything about that.

102 Q. It was not acknowledged or delivered in your presence?

A. No, indeed.

Q. Personally you have no knowledge when it was acknowledged and delivered?

A. No, sir.

Q. Have you any knowledge as to the consideration that passed between Mrs. Tallmadge and Mr. Miller at the time that this deed was delivered by Miller to Mrs. Tallmadge?

A. No, sir; I have no knowledge about it. I was living in Chicago at the date of that deed, and therefore I do not know anything about it.

Q. Was the deed prepared by you in this city?

A. That I do not know. I cannot tell. I do not know whether

I prepared it in Chicago and sent it on here or whether it was prepared here.

Q. Were you in this city at any time in the year 1883?

A. I do not remember whether I was or not.

Q. What was your occupation in September, 1882, at the time that this check was given?

A. I was in the stock-brokerage business.

Q. Where?

A. Chicago.

Q. I believe I asked you, but I will ask you again, if you know where your sister-in-law obtained the money with which she repaid you this loan of five thousand dollars.

A. No, sir. (I believe the money paid to me by Mr. Eddy was realized by a sale of stock belonging to her.)

Q. Do you know whether your sister-in-law has any private income or not independent of her husband's vocation?

A. I do not know anything about that.

103 Q. Were you acquainted personally with John L. Miller?

A. Yes, sir.

Q. How long had you known him at the time that you gave him this check?

A. I had known him since about 1870.

Q. For twelve years?

A. Yes, sir.

Q. Where did you become acquainted with him?

A. Here in this city.

Q. See him often, did you?

A. Quite often.

Q. Was Mr. Miller the owner of any real estate in this city before this transaction?

A. That I do not remember. My relations with him were not intimate enough to know anything about his real-estate transactions. ("That I do not know" instead of "do not remember" in first part of answer.)

Q. If this money was being loaned by you to Mrs. Maria E. Tallmadge why was not this check for five thousand dollars made payable to her order instead of to the order of J. L. Miller?

A. I made it out in that way at her request.

Q. Did you regard this five thousand dollars at that time as a gift or a loan?

A. As a loan at the time.

Q. Why would you not wish, then, to have some evidence of this indebtedness against Mrs. Tallmadge?

A. Why, I saw fit to take my chances on that; she was my sister-in-law, and I had that confidence in her.

Q. Look at that check (referring to Exhibit L. C. T. No. 1),

104 if you please, and tell me by whom it was first endorsed.

A. It seems to be by J. L. Miller.

Q. And who follows J. L. Miller?

A. Miller and Jones.

Q. As indorsers?

A. Yes, sir.

Q. Are there any other indorsers?

A. I see here the Metropolitan National bank has a notice to collect, I think it is; yes, it is simply a notice to collect on the First National Bank of Chicago.

Q. Do you remember when your brother and Mrs. Maria E. Tallmadge were married, what year?

A. In 1868 or 1869; 1868, I think it was.

Q. What has been the occupation of your brother from 1868 to 1882, at the time of this transaction?

A. He was in the insurance business. (From 1868 to 1877.)

Q. Where?

A. Here in the city.

Q. What was his occupation from 1882 to 1887?

WITNESS: From 1882?

Q. From the time that this check was made up to the time that the money was repaid you by your sister-in-law.

A. He was living here in the city, and I think his occupation was connected with some New York corporation.

Q. Of what character?

A. He was connected with the Storage Battery Co. of New York.

Q. Were these five thousand dollars paid you by check or in cash?

A. Paid in cash.

105 Q. Where were you when you received from your sister-in-law that money?

A. I was in the city of Chicago.

Q. Was she also there?

A. No, indeed.

Q. Where was she?

A. She was here in Washington.

Q. You have just said the money was not paid by check, but was paid in cash. Will you please explain how, if you were in Chicago and she here, you received it in cash?

A. It was paid through the hands of a gentleman in Chicago.

Q. What was his name?

A. His name was A. N. Eddy.

Q. What was his business at this time?

A. I do not think he was doing any business at that time at all. Yes; he was in the stock-brokerage business; he had been in the business a few months before that time.

Q. Was he a gentleman of means and leisure?

A. Yes, sir.

Q. And he handed you this five thousand dollars?

A. Yes, sir.

Q. Did you receipt for it?

A. I did to him. (I did not as I know of.)

Q. In what manner did you give him a receipt?

A. I do not remember about that.

Q. At the time that you paid Miller—gave Miller his check of

five thousand dollars—did you take a receipt from him for the money?

A. No, sir; the check itself was a receipt.

106 Q. And you took none from your sister-in-law?

A. No, sir.

Q. Had this gentleman, Mr. Eddy, so much confidence in you at the time that he paid you this five thousand dollars on account of your sister-in-law without a check or receipt from you?

A. That you will have to ask him.

Q. I ask you, sir.

A. How can I tell? You ask me whether I knew he had confidence in me.

Q. I ask you whether he took a receipt from you when he paid you the five thousand dollars. Did he have so much confidence in you that he did not want a receipt?

A. I think you had better ask him whether he had confidence in me or not.

Mr. BAILEY: That is right; be saucy, Mr. Witness. (To witness:) Is Mr. Eddy in anywise related to you or to your sister-in-law?

A. He is related to me.

Q. Is he related to your sister-in-law?

A. No; no relation at all.

Q. Do you know how that five thousand dollars he paid to you came into his possession?

A. I do not. I do not know who paid it to him. (I believe it was the proceeds of stock sold by him.)

Q. By whom was it paid to him?

A. That is something that you will have to ask him.

Q. You were in the stock-brokerage business in Chicago at that time?

A. Yes, sir.

Q. Well, Mr. Eddy was engaged in the same business?

107 A. Yes, sir; you mean in 1882?

Q. I mean in 1887, at the time the money was paid.

A. No, sir; I was not in the stock-brokerage business then. I was in the book business. In 1882 I was in the stock-brokerage business. ("I was in no business" instead of "I was in the book business.")

Q. In 1887 you say you were in the book business in Chicago?

A. Yes, sir. (No, sir; I left the book business in December, 1886.)

Q. And Mr. Eddy was in the stock-brokerage business at that time?

A. Yes, sir; at that time.

Q. Can you say whether you were at your place of business or at his place of business at the time the money was paid?

A. I was at his place of business.

Q. Upon what information and by what advice, as far as this matter was concerned, did you arrive at his place of business to collect the money?

A. I was in his place of business nearly every day, in and out.

Q. Did she promise you at what time she would repay you this five thousand dollars?

A. No, sir.

Q. It was loaned on an indefinite time?

A. Yes, sir.

Q. How long had you been acquainted with Mr. Eddy?

A. About fifteen years at the time that this was paid.

Q. Did you expect when you loaned her the money to receive it back from his hands?

A. No, sir; I did not know anything about how it would be paid back.

108 Q. How long had you been a daily visitor to his place of business?

A. Oh, for several months.

Q. Had you gone there in expectation of receiving this money?

A. Not every day for several months; I was in there on other business.

Q. Was it merely an accident that you learned that he had this money for you?

A. No.

Q. Had Mrs. Tallmadge informed you that it would be there?

A. No, sir.

Q. You must have been very much surprised when Mr. Eddy told you that he had five thousand dollars which he intended to pay you and did pay you on account of this loan of Mrs. Tallmadge?

A. Yes, sir; somewhat, though I had been expecting it.

Q. You have just said that this deed which has been exhibited to you and which was admitted to record among the land records of the District of Columbia on the 4th day of October, 1888, purporting to be signed by John L. Miller and Lola Miller, his wife, dated the 22nd day of December, 1883, is in your handwriting?

A. Yes, sir.

Q. Is that correct? Look at this deed which I have just read and answer.

A. Yes, sir; I have answered that twice; that is my handwriting.

Q. That is right, sir; the more the merrier. You cannot say whether it was written by you in this city or out in Chicago?

109 A. No, sir; I do not remember whether it was prepared here or in Chicago.

Q. Nor at whose request it was prepared?

A. I guess Mrs. Tallmadge requested me to prepare it; I won't say that I remember anything about it; I do not remember anything about at whose request it was prepared.

Q. Who furnished you with a description of the property mentioned in this deed?

A. That I cannot tell; I do not remember about the preparation of the deed; I see that it is in my handwriting—I recognize my handwriting in the deed.

Q. Had you, previously to September 8th, 1882, any business

transactions of any character whatever with Mr. John L. Miller, to whose order this check is made payable?

A. I was in business here in the city at one time, in the insurance business, and he used to insure his property with me; that was the only business transaction that I ever had with him.

Q. You insured his property?

A. Yes, sir.

Q. What property?

A. His billiard saloon.

Q. Where was his billiard saloon?

A. In the National Theatre building.

Q. That check is first indorsed by J. L. Miller, and secondly by Miller & Jones. Have you any personal knowledge who Jones is or was?

A. Why, I know Miller's partner was Mit Jones; I do not know what his first name is, but they called him Mit.

110 Q. Miller and Jones were partners, then?

A. I think so, at that time.

Q. In what business?

A. They kept a billiard saloon in the National Theatre building.

Q. Were you tolerably well acquainted with Jones?

A. Not very well; I had met him a few times.

Q. You had seen him?

A. Yes, sir.

Q. This check, I believe you are quite well satisfied, was not made payable to the order of J. L. Miller to be used by Miller & Jones in the pursuit of their business?

A. It was not given for that purpose at all.

Q. Where did your brother, the husband of Maria E. Tallmadge, reside at the time that this check was given?

A. In the city of Washington.

Q. In what locality?

A. Corner of 11th and P streets.

Q. Did she own the house in which she lived?

A. I think not.

Q. In September, 1882, when this check was given you, were you in the brokerage business?

A. Yes, sir.

Q. On your own account?

A. Yes, sir.

Q. What was the firm name?

A. L. C. Tallmadge.

Q. Broker?

A. Yes, sir.

111 Q. At Chicago?

A. Yes, sir.

Q. And five years later, when Mrs. Tallmadge repaid you, through Mr. Eddy, this money, you were in the book business?

A. Yes, sir. (No, sir; I had been to December, 1886.)

Q. What do you mean by the book business?

A. I was in the subscription book business.

Q. An agent for some establishment?

A. I owned the territories of Illinois and Wisconsin for Blaine's book.

Q. For whose book were you canvassing?

A. I was not canvassing at all. I owned the territory that I have named.

Q. What do you mean by owning the territory?

A. I mean this: The publishers of these large books, like Blaine's Twenty Years in Congress, give out the exclusive sale of the books for certain territories to certain parties. In this instance I had the States of Wisconsin and Illinois.

Q. When that was in existence?

A. Yes, sir.

Q. And you were canvassing?

A. No, sir.

Q. You had your sub-agents?

A. Yes, sir.

Q. Why did you retire from the brokerage business?

A. Because I saw fit to do so.

Q. Are you a man of means now?

A. Yes, sir.

Q. What is your property worth at this time?

112 Mr. HENKLE: You need not answer that if you do not wish to.

WITNESS: I had just as soon answer it.

(By Mr. BAILEY:)

Q. I want to know.

A. It is my private business, and I do not know what you want to know about my private affairs.

Mr. BAILEY: I require an answer to my question. What are you worth at this time in real estate?

A. I will say twenty thousand dollars in real estate.

Q. What were you worth in real estate on the 8th of September, 1882?

A. I had real estate at that time. You mean at Chicago?

Q. Yes.

A. I had real estate there, but not so much as I have now.

Q. What was it worth then?

A. My real estate at that time, perhaps, may have been worth probably about six thousand dollars.

Q. Did you borrow the money to meet this check at its presentation?

A. I had the money in bank.

Q. Was it your money?

A. Yes, sir.

Q. Earned in your business?

A. Yes, sir.

Q. And saved by you?

A. Yes, sir.

Q. And this money which paid this check upon its presentation at the bank was not handed to you by any other person to be paid by you for Mrs. Tallmadge?

A. No, sir.

113 Q. How old a man are you?

A. Forty-seven.

Q. Have you a family?

A. Yes, sir.

Q. How much of a family?

A. Two children.

Redirect examination.

By Mr. DUHAMEL:

Q. I intended to ask you in regard to that deed which you say is in your handwriting and which you identify. How many years ago was that done? Can you form any idea?

A. That I cannot tell. I do not know.

Q. Did you know it to exist at the time that this money was repaid to you?

A. Yes, sir. I know it was before that in a general way. I know it was long before that, but I cannot tell any particular date.

Q. You have been asked about your financial condition, so far as real estate is concerned, at the time of the making of this check.

A. Yes, sir.

Q. You have not told us whether you owned other property, whether you had personal property that you owned at that time.

A. I was worth at that time about fifty thousand dollars.

Q. In addition to your real estate?

A. Yes, sir.

Q. Of what description was that property?

A. It was in stocks.

Q. What relation is Mr. Eddy to you?

114 A. My brother-in-law.

Q. Your wife's brother?

A. Yes, sir.

Q. Did you know for what purpose Mr. Miller was to apply this money that you gave him this check for? Did you know it at the time?

A. Why, I understood it was to make this first payment on this house.

Q. For whose benefit was it to be done?

A. For the benefit of Mrs. Tallmadge.

Q. For her home?

A. Yes, sir.

Recross-examination.

By Mr. BAILEY:

Q. From whom did you get the understanding that this check was to be applied by Mr. Miller in payment for a home for Mrs. Maria E. Tallmadge?

A. From conversations with Mrs. Tallmadge and my brother—both.

Q. When for the first time did you learn that this deed of December 22nd, 1883, had been executed by John L. Miller and wife to your sister-in-law, Mrs. Tallmadge?

A. I cannot tell anything about that; I do not remember.

Q. At the time that you loaned this money to Mrs. Tallmadge and gave Mr. Miller the check therefor did you know that this property was going to be taken in his name?

A. I do not know whether I did or not. I did not loan the money to Mr. Miller. I gave him a check at the request of Mrs. Tallmadge.

115 Q. When for the first time did you learn that the property that had been partly paid for, as you say, with the money named in this check was really in Miller's name instead of Mrs. Tallmadge's name?

A. I cannot tell; I do not remember when I did.

(Signed) LEWIS C. TALLMADGE.

Subscribed and sworn to before me this 18th day of June, 1889.

(Signed) EDWIN FORREST,
Examiner in Chancery.

The certain answers in bracket- are the replies the witness desires to stand for his answers to the questions immediately preceding, as appears by his testimony on pages 23, 24, and 25 hereof.

The further taking of testimony was adjourned until tomorrow (Friday, June 14, 1889) at three o'clock p. m.

EDWIN FORREST,
Examiner in Chancery.

FRIDAY, *June 14th*, 1889—3 o'clock p. m.

Met pursuant to adjournment, and adjourned until Monday, June 17th, 1889, at three o'clock p. m.

MONDAY, *June 17th*, 1889—3 o'clock p. m.

Met pursuant to adjournment.

Present: Messrs. Henkle and Duhamel, solicitors for the complainant; Messrs. Bailey and Williamson, solicitors for the defendant; the examiner,

And LEWIS C. TALLMADGE, a witness on behalf of the com-
116 plainant, who, on being recalled, further testified as follows:

Direct examination.

By Mr. DUHAMEL:

Q. Have you examined the typewritten copy of the stenographer's notes taken at the last session?

A. Yes, sir.

Q. Have you made any corrections thereon?

A. Yes, sir.

Q. Is that testimony as now corrected your testimony in this cause?

A. Yes, sir.

Mr. DUHAMEL: I offer the witness for cross-examination.

Mr. BAILEY: I object to the question because it is asking the witness to correct in a vague, indefinite, uncertain, and unsatisfactory manner testimony given by him at a former hearing and reported by the examiner.

Cross-examination.

By Mr. BAILEY:

Q. That is the testimony in which you desire to make corrections, is it?

Mr. DUHAMEL: I object to its being called testimony because it has never been signed by the witness. They are simply the notes taken down by the stenographer, and the paper has not been signed nor returned as the testimony of the witness.

Mr. BAILEY: Question withdrawn. (To witness:) The notes that you hold in your hand now, prepared by the examiner, are the notes to which you desire to make corrections, are they?

A. These are; yes, sir.

117 Q. Will you please commence at the very outset of your testimony and continue until the end of it is reached and inform me to what parts of your testimony you desire to make corrections?

A. On page 4 of the testimony is this question: "Do you remember the date of that transaction? A. The check is dated the 6th day of September, 1883."

Q. Now, sir, what correction do you wish to make to that?

A. I want to have it 1882, and whatever the date of the check is, either September 6th or September 8th; it is September 6th here.

Q. Now, the next correction that you wish to make.

A. On page 5 is a question, "Have you any idea where she obtained the money that she paid you? A. No, sir; I have not. I do not know anything about it."

Q. Now, what correction do you wish to make to that?

A. I do not know anything about it other than I believe Mr. Eddy obtained it as proceeds of some stock.

Q. Those are the words that you wish to add?

A. Yes, sir.

Q. What stock do you refer to?

Mr. DUHAMEL: Now, I object.

Mr. BAILEY: I withdraw that question.

A. On page 9 is the question, "I believe I asked you, but I will ask you again, if you know whether your sister-in-law obtained the money with which she repaid you this loan of five thousand dollars? A. No, sir." What I want to answer is, I believe the money

paid to me by Mr. Eddy was realized by a sale of stock belonging to her.

Q. What next?

118 A. On page 10 is the question, "Was Mr. Miller the owner of any real estate in this city before this transaction?" The answer as written out is, "That I do not remember." It should be, "That I do not know." On page 11 the question is, "What has been the occupation of your brother from 1868 to 1882, at the time of this transaction?" The answer is, "He was in the insurance business." It should be "from 1868 to 1877"—that is, that should be added to the answer. On page 12 the question is, "Did you receipt for it?" The answer as written out is, "I did to him." The answer I wish is, "I did not as I know of."

Q. That ought to be the answer?

A. Yes, sir. On page 13 the question is, "Do you know how that five thousand dollars he paid to you came into his possession?" The answer is, "I do not; I do not know who paid it to him." What I want to say is, "I believe it was the proceeds of stock sold by him." On page 14 the question is, "I mean 1887, at the time the money was paid. A. No, sir; I was not in the stock-brokerage business then; I was in the book business. In 1882 I was in the stock-brokerage business." What I want to have it say is, "I was in no business." Then the next question on the same page is, "In 1887, you say, you were in the book business in Chicago? A. Yes, sir." Now, I want to say, "No, sir; I left the book business in December, 1886." On page 17 the question is, "And five years later, when Mrs. Tallmadge repaid you through Mr. Eddy this money, you were in the book business? A. Yes, sir." The answer should be, "No, sir; I had been to December, 1886."

Q. Please turn to the question on page 5 of that testimony to which you have desired the stenographer to make a correc-

119 tion, and tell me, if you please, what stock you refer to in your corrected answer?

A. I refer to some telephone stock.

Q. Did Mrs. Tallmadge own telephone stock?

A. I am sure that she did.

Q. You do not know that positively?

A. Yes, sir; I saw some in her name.

Q. Why did you not say so, then, instead of saying "I am sure that she did"?

A. I thought that was the strongest way to put it.

Q. When did you see it?

A. I saw it in the possession of Mr. Eddy.

Q. When?

A. I saw it several times.

Q. When was the last time that you saw it?

A. I saw it in 1887.

Q. How long before this check was paid?

A. Along about a week.

Q. Did Eddy tell you that he had been directed to sell the telephone stock?

A. Yes, sir.

Q. Did he mention the telephone stock to you at the time he paid you the money?

A. I do not know that he did; I know that the sale had been made.

Q. Why, in your cross-examination the other day, did you say that you did not know where she obtained the money to pay your debt?

120 A. I do not know today absolutely, but in looking over this matter I see that you said, Had you any idea? That is the question.

Q. At the time that you loaned your sister-in-law five thousand dollars did you know that she owned telephone stock?

A. Yes, sir.

Q. Did you loan it upon the theory that the sale of the telephone stock would repay you?

A. I loaned it upon the theory that either that or the property would pay the debt.

Q. Had you any agreement with her at the time?

A. No, sir.

Q. None whatever in respect to this loan?

A. No, sir.

Q. You said the other day that you loaned it to her upon your confidence in her.

A. I did.

Q. What has led you to refresh your memory since to make these corrections?

A. Simply the question; in looking over the question—the form of the question.

Q. Could you not understand those questions at the time of the examination?

A. I did not understand them; I did not take in the full import of, Have you any idea where she obtained the money?

Q. I now, then, ask you have you any knowledge where she obtained the money?

A. I know that she sold telephone stock at the time through Mr. Eddy.

Q. Do you know how much was realized from the sale of it?

121 A. No, sir.

Q. You could not state, you have no idea, whether it was one hundred dollars or ten thousand dollars?

A. I have an idea; yes.

Q. What is your idea? Mind I say idea.

A. My idea is that she obtained over six thousand dollars.

Q. What is your idea as to the disposition of the excess over the five thousand dollars that Mr. Eddy handed you?

A. I cannot answer.

Q. What is your idea as to how this telephone stock came into possession of Mr. Eddy for sale rather than placing it to be sold in this city?

A. I think it was placed there by Mrs. Tallmadge for him to sell.

Q. Have you any idea why she would go to Chicago to sell telephone stock when there are a great many brokers in this city who sell telephone stock?

A. Chicago is a great telephone point.

Q. Have you any idea why she went there rather than sell it here?

A. I have no doubt she went there because she had confidence in Mr. Eddy.

Q. That is the only reason that you assign?

A. Yes, sir.

Q. For leaving this city where stocks are being bought and sold to go to Chicago?

A. Yes, sir.

Q. Have you any idea that she placed that stock there because you were in Chicago?

122 A. She may have done so.

Q. Where do you reside now?

A. My home is in Chicago, but I have been here for several months.

Q. Are you not the law partner of Henry H. Tallmadge?

A. We have a firm, but we are not law partners at any rate.

Q. What is the business of the firm?

A. We have been collecting claims against the United States.

Q. Where is your home in this city?

A. I am boarding at 1011 M St.

Q. Were you boarding there when the city directory was printed this year?

A. I do not know when it was printed.

Q. On the first day of January in each year we have published in this city a city directory; were you boarding there then?

A. I was.

Q. How long previously had you boarded there?

A. I went there in October.

Q. Of last year?

A. Yes, sir.

Q. How many months or years have you been in this city?

A. I have been here now since May, 1888; a year ago last May.

Q. You have no business now, then, at Chicago?

A. Yes, sir; I have. I have interests there, large interests.

Q. Have you any particular business which you yourself pursue for a livelihood?

WITNESS: In Chicago?

123 Q. Yes, sir.

A. No, sir; not now.

Q. Have you in the States of Illinois or Wisconsin?

A. No, sir; I have not.

Q. You have not?

A. No, sir.

Q. The vocation—occupation—that you now follow in this city is that of a claim agent?

A. It is now.

Q. Partner with your brother?

A. We have a firm.

Q. Now, you say positively that this telephone stock to which you refer was the property of your sister-in-law?

A. I say that it was in her name; that is all that I know about it.

Q. You saw the stock, did you?

A. Yes, sir.

Q. And knew it?

A. Yes, sir.

Q. How long have you known your sister-in-law?

A. Since 1864.

Q. Do you know where she obtained the money with which she purchased the telephone stock?

A. No, sir.

Q. Did you ever know of any means that she had wherewith to buy such stock?

A. I do not know anything about her financial condition at all.

Q. But you did know at the time that you loaned her five
124 thousand dollars that she owned stock?

A. I will not say at the time, but I will say about that time, I knew of her holding stock.

Q. You will say that a short time previously or a short time subsequently?

A. That I cannot tell; it was about that time that I knew she held stock.

Q. And you had no idea, you say, where she obtained it?

A. No, sir; I do not know anything about that.

Q. Will you repeat, now, for the purpose of these corrections, the time when your sister-in-law and brother were married?

A. 1868.

Q. What was the date of this telephone stock?

A. Oh, I do not know anything about it. You mean the date of this certificate?

Q. Yes, sir.

A. I do not know. I do not remember anything about it. I do not know that I noticed it.

Q. You may now repeat again the question on page 9 to which answer you desire a correction to be made.

A. The question is, "I believe I asked you, but I will ask you again, if you know where your sister-in-law obtained the money with which she repaid you this loan of five thousand dollars," and I answered, "No, sir." I have corrected that by saying, "I believe the money paid to me by Mr. Eddy was realized by a sale of stock belonging to her."

Q. And is that the same stock to which you have just made reference?

A. Yes, sir.

125 Mr. BAILEY: That will do.

LEWIS C. TALLMADGE.

Subscribed and sworn to before me this the 18th day of June, A. D. 1889.

EDWIN FORREST,
Examiner in Chancery.

MARIA E. TALLMADGE, the complainant and a witness in her own behalf, of lawful age, being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. DUHAMEL:

Q. You are the lady who brought this suit?
A. Yes, sir.
Q. Do you remember the circumstances under which you first became aware of Mr. Bates having a house for sale?
A. I saw it advertised in the Star.
Q. Where was that house situated?
A. 1313 R street northwest.
Q. Now, when was that? Do you remember?
A. September, 1882.
Q. Now, what did you do? Did you go to see Mr. Bates?
A. Yes, sir.
Q. Tell us what transpired then.
A. Well, we went to see Mr. Bates, and I told him that I had seen his advertisement in the Star and I was looking for a home and the house suited me very nicely. We paid a hundred dollars
126 down to bind the bargain. The first time we went was in the evening. The next day we went in there during the daytime and looked over the house. There were two or three after it, and we paid him a hundred dollars to bind the bargain.
Q. Now, then, how much cash did you pay?
A. I paid him five thousand dollars cash.
Q. How was that paid?
A. Well, it was paid through my brother-in-law, Mr. L. C. Tallmadge.
Q. Now, then, how was the deed taken from Mr. Bates?
A. It was taken through Mr. Miller. He acted for me.
Q. Did Mr. Miller pay Mr. Bates anything himself?
A. Never; only my own money.
Q. Did you give a deed of trust on the property?
A. I gave Mr. Bates a deed of trust.
Q. How much was the whole purchase-money?
A. Ten thousand dollars. We paid five thousand dollars cash besides the hundred dollars to bind the bargain, and then, of course, he took a deed of trust back for five thousand dollars.
Q. How many lots were there in the piece of property?
A. There were two lots in the piece of property.
Q. Was the property improved by a house?
A. Yes, sir; it was improved by a house. Thirty-eight feet front was the width of the lots.

Q. That was on one of the lots?

A. It was on one and part of two. Each lot was nineteen feet.

Q. How wide is the house?

A. Twenty-three feet.

127 Q. Was it on one lot and part of another?

A. Yes, sir.

Q. How soon did you take possession of the house?

A. Immediately. We saw Mr. Bates about, I think, the sixth or eighth of September, and we moved in on the twentieth.

Q. I hand you here a deed from Henry H. Bates and wife to John L. Miller, which was recorded on the 12th of September, 1882, and it calls for lots 78 and 77; are they the two lots that you have been talking about?

A. Yes, sir.

Q. Where did you get that deed from—how did it come into your possession; do you remember?

A. Well, at the time Mr. Miller acted for me, but when Mr. Miller deeded to me it came through Mr. Miller.

Q. When Mr. Miller made a deed to you did he give you this?

A. Yes, sir; he gave me the deed.

Q. Do you know whether or not this is the deed from Bates and wife to Miller?

A. Yes, sir.

The solicitor for the complainant here offers the said deed in evidence, and the same is accordingly marked as "Complainant's Exhibit M. E. T. No. 16."

Q. Look at this deed and state whether or not that is the deed from Mr. Miller to you.

A. Yes, sir.

Q. When was that deed (referring to Complainant's Exhibit M. E. T. No. 2) made? Was that made at the time that it purports to have been made on its face?

A. Yes, sir; on the 27th day of December, 1883.

128 Q. Have you paid any interest to Mr. Bates on account of that deed of trust for the deferred payment?

A. Yes, sir; we paid him every six months.

Q. Do you know Mr. Bates' handwriting?

A. Well, I do not know.

Q. Do you know his signature?

A. His signatures are right there (referring to papers in counsel's hands).

WITNESS: Yes, sir; those are Mr. Bates' receipts.

The solicitor for the complainant here offers in evidence the said receipts, and they are accordingly marked as "Complainant's Exhibits M. E. T. Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 and returned by the examiner with the complainant's depositions.

Q. Now, look at this letter and this note, which I offer in evidence as Exhibits M. E. T. Nos. 14 and 15, and tell us what these are.

A. When we bought the house we paid five thousand dollars cash

and then gave notes for five thousand dollars. We were to pay one thousand dollars each year, with interest, and we took up this first note and paid our interest. It was not convenient for me to take up the others, and we paid the interest, which was agreeable to Mr. Bates.

Q. Is this the note (referring to Exhibit 15) that you took up?

A. Yes, sir.

Q. How did this note and letter come into your possession?

A. Well, we were in New York at the time, and we sent the money here through Mr. Cary, a friend of ours in New York.

129 We gave him the cash and he sent the money.

Q. Now, here are these eleven receipts; how did they get into your possession?

A. Through Mr. Bates when I paid him.

Q. Were the receipts sent to you or to Mr. Miller?

A. They were sent to me sometimes. If I was not at home Mr. Miller transacted my business, took the receipts and gave them to me when I returned.

Q. Now, did you buy after that another piece of land?

A. Yes, sir; the adjoining lot of nineteen hundred feet.

Q. Who did you buy that from?

A. I negotiated through Mr. Miller; Mr. Clagett owned the lot.

Q. Was that deed taken in Mr. Miller's name?

A. Yes, sir.

Q. How much cash did you pay for that lot?

A. We were to pay in three notes—make three different payments. We paid the first.

Q. You made the first payment?

A. Yes, sir; and we got the deed.

Q. Did you afterwards take up the other note?

A. Yes, sir.

The solicitor for the complainant here offered in evidence the deed of said property, and the same is marked as "Complainant's Exhibit M. E. T. No. 17."

Q. Are these the notes (referring to papers in his hand)?

A. Yes, sir.

Q. Here is a deed of release from Howard C. Clagett and John W. Boteler. Was that the release executed of the trust?

130 A. Yes, sir.

Q. The solicitor for the complainant here offered the said deed of release in evidence, and the same is marked as "Complainant's Exhibit M. E. T. No. 18."

Q. Now, then, after you had settled with Mr. Clagett, was it then or before that that you took a deed from Mr. Miller to yourself?

A. After I settled everything.

Q. Now, then, who was paying the taxes on that property?

A. I had paid them. I have some of the receipts here.

Q. How about the water rent? Have you always paid that?

A. Yes, sir.

Q. And insurance?
A. I paid that myself.
Q. Have you got it insured now?
A. No, sir; it is not at present.
Q. Did you have this title of Mr. Bates to the property examined before you bought the property?
A. Yes, sir.
Q. Did you pay for that?
A. Yes, sir.

The solicitor for the complainant here offered in evidence said abstract, and the same is marked as "Complainant's Exhibit M. E. T. No. 19."

Q. Did you make any improvements on the property after you bought it?
A. Yes, sir.
Q. What, if anything, have you spent on that property?
A. I have spent over a thousand dollars. We have pa-
131 pered it throughout twice and painted it twice and made other improvements.
Q. Did Mr. Kirby or any of these parties ever come to see you to know anything about what you were doing in the house?
A. No, sir.
Q. Make any inquiries of you?
A. No, sir; nobody ever came to our house at all about it.
Q. Did Mr. Miller ever have any interest or pay any money of his own on this property?
A. None at all.
Q. Simply held this title for you?
A. Just held it for me.

Cross-examination.

By Mr. BAILEY:

Q. What is your husband's occupation?
A. At present he is in the pension business.
Q. How long has he been in that business?
A. Less than a year.
Q. What was his occupation at the time that you married him?
A. Insurance agent.
Q. Where?
A. In this city.
Q. How long did he remain in that business?
A. Eight or nine years; I have forgotten. You had Mr. Lewis Tallmadge tell the dates. I do not remember, really.
Q. What business did your husband next engage in in this city or elsewhere?
A. In different kinds of business. He was in New York in busi-
ness.
132 Q. How long in New York city?
A. Several years.

Q. What years?
A. Well, somewhere along in 1880 and 1881.
Q. Were you with him there?
A. No, sir; I was here.
Q. What business was he engaged in in the city of New York?
A. He was in the electric-light business and storage-battery business.
Q. He returned from New York city to this city?
A. Yes, sir.
Q. And engaged himself in business here?
A. Yes, sir; in this last year or so. From 1882 until about a year ago his business was principally outside of this city.
Q. Do you know what the character of that business was?
A. Well, as I stated, it was with these different companies that employed him.
Q. How often would he return to this city?
A. Every month and sometimes oftener.
Q. Was he a traveler?
A. No, sir.
Q. Was he a canvasser?
A. No, sir; not a canvasser.
Q. An agent?
A. He was employed by these companies to travel for them.
Q. Your brother-in-law resides in this city, I believe?
A. He has for the last year.
Q. He is your husband's law partner, is he?
133 A. He is in business with him.
Q. Claim business?
A. Yes, sir.
Q. There was offered in evidence here a few days ago a check for five thousand dollars, dated September 8th, 1882, made by Lewis C. Tallmadge, the first witness in this cause, to the order of John L. Miller. Before that check was offered as testimony, a few days ago, had you ever seen it?
A. Yes, sir; I had seen it.
Q. Before the other day?
A. Yes, sir.
Q. When and where had you seen it before the other day?
A. At the time it was given and since then.
Q. Given by whom?
A. By Mr. Lewis C. Tallmadge to Mr. J. L. Miller.
Q. Under what circumstances had you seen that check before?
A. When it was paid.
Q. State the first time.
A. When it was paid.
Q. How did you come to see it when it was paid?
A. Mr. Miller was here, and it was my business that he was attending to.
Q. Who collected that check? You say you saw it paid. Who received the money on the check?
A. Mr. Miller received the money.

Q. When?

A. I saw the check and it was given to Mr. Miller and he received the money.

Q. When?

A. In 1882.

134 Q. Where was that check paid?

A. It was paid here.

Q. At what bank?

A. Well, I have forgotten the bank; it was the bank where Mr. Miller did his business; the check shows.

Q. Where was Mr. Tallmadge when the check was written?

A. Mr. Tallmadge was in this city.

(By Mr. DUHAMEL:)

Q. Which Mr. Tallmadge?

A. Mr. Lewis C. Tallmadge.

(By Mr. BAILEY:)

Q. The maker of the check was in this city?

A. Yes, sir.

Q. Did you see him write that check?

A. I do not know that I saw him write it; it was written for me.

Q. Did he deliver that check to anybody in your presence?

A. He delivered it to Mr. Miller.

Q. In your presence?

A. I do not know that it was in my presence, but it was for me; I cannot say that it was in my presence.

Q. You do not know, then, when that check was delivered to Mr. Miller?

A. It was delivered in September, 1882.

Q. As a fact, you do not know that that check was ever delivered?

A. I know it was delivered to Mr. Miller.

Q. How do you know it?

A. I have proof of it.

Q. Did you see it?

A. I have seen the check.

135 Q. Did you see that check delivered to Mr. Miller?

A. I do not know that I can say I saw the check delivered.

Q. You cannot say that you know that that check was delivered to Mr. Miller by Mr. Lewis C. Tallmadge?

A. I do not know that I have to say that I can say that.

Q. Did you ever see that check in the hands of Mr. John L. Miller before it was cashed?

A. It was paid to Mr. Miller.

Q. Did you see it in Mr. Miller's hands?

A. I do not know; I could not say that I saw it in Mr. Miller's hands.

Q. You have just said that that check was paid in your presence?

A. No; I did not say that; I say it was paid; I saw the check before it was paid and I know it was paid.

Q. Tell me, then, in whose hands did you see that check.
A. In Mr. Lewis C. Tallmadge's hands.
Q. Did you see him write it?
A. I saw him with the check.
Q. You knew that he had written that check?
A. I knew that he had written it.
Q. Where was he at the time?
A. In the city.
Q. At whose house?
A. At my house.
Q. Where did you reside then?
A. I resided on R street after we had moved; but this was before we had moved.

Q. Where were you residing at the time the check was made?
136 A. We were living at the corner of 11th and P streets at the time the check was made.
Q. And that check was written at your house?
A. Yes, sir.
Q. In this city?
A. I saw the check.
Q. You did not see when it was written, did you?
A. I do not know that I saw him write it.
Q. Under what circumstances did your brother-in-law come to make that check? I wish you to state whether you wrote to him at Chicago that you wanted it, or whether you went to Chicago and requested it, or whether he came to this city at your request to give it, or whether negotiations in respect to that check were completed by correspondence.
A. It was made in this city by Mr. Lewis C. Tallmadge; he was here at the time that I was trying to buy the house, and he moved into the house with me; he was visiting at my house and he moved with me into it.
Q. And wrote that check there?
A. Yes, sir; he loaned me that money there.
Q. You say that he loaned you that money?
A. Yes, sir; the check.
Q. How did the check come to be made payable to the order of John L. Miller?
A. Simply because Mr. Miller transacted all my business for me, and I was thinking of buying another lot adjoining and I asked him to see to it all for me.
Q. Had you ever before borrowed any money from your brother-in-law, Lewis C. Tallmadge?
137 A. No, sir.
Q. Have you ever borrowed any from him since?
A. No, sir.
Q. Have you ever repaid to your brother-in-law this five thousand dollars that you say you borrowed from him?
A. Yes, sir.
Q. When did you repay him?
A. I repaid him in 1887, I think.

Q. Where was he when you repaid him?
A. He was in Chicago.
Q. How did you repay him?
A. I repaid him through Mr. A. N. Eddy.
Q. How came you to be acquainted with Mr. Eddy?
A. Through a family relationship.
Q. What relation is Mr. Eddy to you?
A. He is none to me. He is a brother-in-law of Mr. Lewis C. Tallmadge.
Q. Are you personally acquainted with Mr. Eddy?
A. Yes, sir.
Q. Were you personally acquainted with him at that time?
A. Yes, sir.
Q. How long had you known him?
A. For a number of years.
Q. And you paid Mr. L. C. Tallmadge through Mr. A. N. Eddy?
A. Yes, sir.
Q. In what way did you repay him?
A. I paid him in cash.
Q. Was that cash sent by check or by express?
A. By express.
138 Q. From this city?
A. Yes, sir; from this city.
Q. Of what date?
A. It was in 1887.
Q. To whom was the package of five thousand dollars cash expressed?
A. Mr. Eddy.
Q. Were you not advised of your brother-in-law's address at that time?
A. No, sir; I did not know it. Mr. Eddy attended to my affairs at that time.
Q. What affairs?
A. Well, I owned some stocks.
Q. What kind of stocks?
A. Different stocks.
Q. Where did you get those stocks?
A. They were given to me by my father.
Q. Who was your father?
A. Mr. John H. Reese. He is dead now.
Q. Where did he reside?
A. He resided with me.
Q. In this city?
A. Yes, sir; 1313 R street.
Q. Was he a resident of this city?
A. Yes, sir.
Q. Did he reside with you before you went to R street?
A. Yes, sir.
Q. Where?
A. On Eleventh street.

139 Q. When did he first come to reside with you on Eleventh street?
A. I always lived with him; we have always lived together.
Q. Had he any other family?
A. Yes, sir.
Q. How many members of it?
A. Five children.
Q. Boys and girls?
A. Yes, sir; one boy and four girls.
Q. Was he the owner of real estate in this city?
A. Yes, sir.
Q. Whereabouts?
A. On I street.
Q. Between what streets?
A. Ninth and Tenth.
Q. What became of it?
A. He sold it.
Q. In what year?
A. In 1886, I think.
Q. What was Mr. Reese's business?
A. Well, for years he did nothing.
Q. Who took care of him?
A. His money.
Q. When did he die?
A. Two years ago.
Q. Did he leave a will?
A. No, sir.
Q. He owned a great deal of stock, did he?
A. He owned considerable.
140 Q. When did he give you this stock to which you have made reference in your testimony?
A. Some years ago, when it was of very little value.
Q. Where did you keep that stock for all these years?
A. I had it with different persons. Mr. Eddy had it at the time it was sold; it was of very little value when I first acquired it.
Q. How much did you get for the telephone stock?
A. Over seven thousand dollars.
Q. How many shares had you?
A. Some seventy-eight, I think. I had other stock.
Q. What other stock?
A. In the electric light and different other things, which were of no value at the time.
Q. Did you sell them also?
A. No, sir; I have them.
Q. You still have them?
A. Yes, sir.
Q. You say that they are of no value?
A. They are of very little value.
Q. And this stock was sold through the hands of Mr. Eddy?
A. Yes, sir.
Q. What did he do with the money that he obtained from it?

A. He sent it to me.

Q. How long before you repaid Mr. Lewis C. Tallmadge the sum of five thousand dollars; was it when Mr. Eddy sold your stock for you?

A. I paid him shortly after the stock was sold; it was not very long after that.

141 Q. Why did you not have Mr. Eddy pay him in cash there?

A. I paid him. He attended to business for my father. My father owned stocks at the same time.

Q. He did business for whose father?

A. My father owned stocks and he sold at the same time.

Q. I am now, then, to understand you as saying that this telephone stock of which you speak was by yourself and in your name placed in the hands of Mr. Eddy for sale?

A. Yes, sir.

Q. And I am to understand further that it was sold by Mr. Eddy and that the proceeds of that sale were expressed and then delivered to you individually and personally?

A. Yes, sir.

Q. And that you received that money?

A. I received the money.

Q. And having received it you then sent in 1887 by express to Mr. Lewis C. Tallmadge, through the care of Mr. Eddy, the sum of five thousand dollars in repayment of this loan of Sept. 8th, 1882?

A. Yes, sir.

Q. What interest, if any, did you pay Mr. Tallmadge for the use of that money?

A. I paid about eight per cent.

Q. You sent him, then, more than five thousand dollars?

A. Yes, sir; I paid him eight per cent. I got over seven thousand dollars for the stock and I paid it out.

Q. And this money was sent through Mr. Eddy because you did not know Mr. Tallmadge's address in Chicago?

A. Yes, sir.

142 Q. Did you regard that five thousand dollars as a loan from Lewis C. Tallmadge when the check was delivered by him to Mr. Miller?

A. He loaned it to me; yes, sir.

Q. Had you any agreement as to the time that you would repay him?

A. No, sir.

Q. Did you tell him when you expected to repay him?

A. No, sir.

Q. Did you tell him from what source you expected to repay him?

A. I did not.

Q. You said nothing to him about the stocks that you held?

A. No, sir.

Q. At the time that this property was purchased, Sept. 12, 1882, being two of these lots, and the deed taken from Henry H. Bates

by John L. Miller in his name, did you pay a cent in cash out of your own pocket?

A. I paid the five thousand dollars on this check.

Q. Did you hand it to Mr. Bates yourself?

A. Mr. Miller attended to it for me.

Q. Did you see Mr. Miller?

A. I did not see him. I knew that he did it, though.

Q. How did you know that he did it?

A. Because I had confidence enough in him to know that when I trusted him.

Q. That is the only reason?

A. Yes, sir; my confidence in Mr. Miller.

Q. Did you have any money at that time of your own?

143 A. I had this stock.

Q. Did you know what it was worth?

A. I did not. It was of little value, most of it, at that time.

Q. You never expected to get seven thousand dollars for it?

A. I never expected to get as much as I did, but I had other stocks.

Q. But you say that they were worthless?

A. Some were and some were not.

Q. Have you sold all of those?

A. I am holding them, but they will bring me money.

Q. These bonds sold for seven thousand dollars. You have just said that at the time you purchased this property through Mr. Miller the stocks were not worth much. If you had no money at the time I would like you to explain now why, without any prospects for paying the balance of the ten thousand dollars due on the property and without any prospects even of repaying your brother-in-law the sum of five thousand dollars, you should undertake the purchase of the property.

A. I owned stocks and my father was living with me and giving me money.

Q. Why, then, did you not ask your father to give you the money?

A. He had his property at that time, and his money was invested in stocks.

Q. Did you ask him to loan it to you?

A. I did not. I did not ask him because L. C. Tallmadge loaned it to me.

Q. When did you ask him?

144 A. At the time the property was advertised for sale; before he moved with me in the house.

Q. You did not consult your father about that?

A. No, sir. I knew my father was going to live with me, and he lived with me until he died.

Q. You did not tell him the circumstances?

A. He might have known it. He was living in the house and knew all my affairs.

Q. Did you tell your father that you were borrowing five thousand dollars from Mr. L. C. Tallmadge?

A. I do not know that I told him at the time, but he knew that I was borrowing money.

Q. Who else could have told him?

A. I presume that he heard it at the house, though I would not say. We talked the matter over at the house. He lived with me and knew all of my affairs. He lived with me eight or nine years, and he lived with me in that house up to two years ago.

Q. Have you ever paid the balance on account of the purchase-money of ten thousand dollars?

A. I have not paid it.

Q. How much have you paid?

A. The first note of a thousand dollars.

Q. When did you pay that?

A. When it came due, as it says there (referring to paper).

Q. Where did you get that money?

A. That came from some stock that I sold. I had the cash and I paid for it.

Q. The money came from the sale of stocks?

145 A. I sold out some stocks at a small value.

Q. Where did you sell the stock?

A. New York.

Q. In what form did you sell the stock?

A. I do not remember the form; I got the money.

Q. How much money did you get?

A. I got eleven hundred and fifty dollars; that I sent on for the first note and interest.

Q. What year was that?

A. That was in 1883.

Q. Where was your husband then?

A. We were in New York at the time; my husband's business was there.

Q. Did you come on here to pay the note?

A. No, sir; I sent the money.

Q. To whom?

A. To Mr. Bates; the receipt shows that.

Q. How did you send it?

A. I sent it through a check given by Mr. Clarence Cary.

Q. Who is he?

A. An intimate friend of ours in New York.

Q. What business was he engaged in?

A. He was a lawyer.

Q. Why did you use his check instead of your own if you had the cash, and you state that you had?

A. Simply because I wanted to do it.

Q. In the purchase of this house, although it was bought for your benefit, you preferred to have it bought through checks of five or six different persons rather than your own?

146 A. I did not have five or six others to do it.

Q. You will admit, then, five or six others did do it before you get through with this cross-examination. The first note, then, was paid in that way?

A. It was paid by a gentleman of New York city, Mr. Cary.
Q. With your money, of course?
A. With my money.
Q. Have you paid the other four thousand dollars due on the property?
A. I have not.
Q. Why not?
A. Because it was not convenient for me to pay it.
Q. Have you not some further cash from these sales?
A. I have no cash at present.
Q. Have you no further stocks that you could sell?
A. I have stocks, but I have not seen fit to sell them. It is just as satisfactory for Mr. Bates to take the interest as it is as present being paid.
Q. You preferred to pay interest on that?
(Question not answered).

Q. In the bill of complaint filed in this cause you charge that the lot that was purchased by Miller in June, 1883, was also purchased with your money; that is true?
A. Yes, sir.
Q. Where did you get the money with which you paid for that?
A. I made three payments. I said I was getting money from my father; he was living with me, and when I needed money I went to my father and got it.

147 Q. Where did you get the money with which you made the first payment?
A. I had the money.

Q. Where did you get the money with which you made the second payment?
A. I had my father with me at the house, and when it was not convenient for me he made the payment for me or loaned me the money.
Q. Did your father, who was loaning you money and making payments on this house, know that the property at that time was in the name of John L. Miller?
A. Yes, sir; he knew it.
Q. How did he know it?
A. Simply because I told him that Mr. Miller was acting for me and transacting my business for me.
Q. Your father owned real estate?
A. Yes, sir.
Q. In this city?
A. Yes, sir; in this city.
Q. And knew that you were living in a house, paying money for it, and that the land records of the District showed it to be in somebody else's name. Is that true?
A. Yes, sir; it was in Mr. Miller's name.
Q. Did he object to it?
A. No, sir.

Q. As a business man he consented, and where was the next money obtained?

A. I made the three payments on the other lot that I owned there through the assistance of my father.

Q. How much money altogether did you get from your father?

148 A. I could not say that.

Q. Did you get it by check or was it in cash?

A. It was in cash.

Q. Did you pay the notes in cash or by check?

A. Cash.

Q. Did you not keep a bank account?

A. Well, no, sir.

Q. What did you do with all this money that you got from Chicago?

A. I used it as I got it. I owed money and I paid it out.

Q. Did you put any of it in bank?

A. No, sir.

Q. How long did that seven thousand dollars remain in your possession after you got it?

A. I could not tell that.

Q. A month?

A. That I could not say.

Q. Do you think it remained there three months?

A. Well, I could not tell how long it remained with me.

Q. You do not know anything about that?

A. I could not say how long it remained with me.

Q. Did you owe many debts at that time?

A. I owed some debts.

Q. And you paid them with the proceeds of the sale of stock?

A. Yes, sir.

Q. You say that a building was on the property when you purchased it?

A. Yes, sir.

Q. You took possession immediately?

149 A. Yes, sir; I took possession immediately, and I have been there ever since.

Q. Did you agree to pay any rent for it?

A. No, sir.

Q. Did Miller ever occupy it?

A. No, sir; nobody has lived there but myself.

Q. Are you in anywise related to Mr. Miller or any of his family?

A. No, sir; not at all.

Q. How long had you known Mr. Miller?

A. I had known him for a number of years—eight years, I guess—intimately.

Q. How long had he been acting as your agent?

A. Whenever I wanted any business transacted Mr. Miller always attended to it for me.

Q. Did he ever own real estate in this city?

A. Well, I think he owned some; yes, sir.

Q. Were you born in this city?

A. Yes, sir.

Q. There is one question I omitted to ask you, and that is this, If Mr. Miller was to buy this property with your money and for your benefit in September, 1882, why was not the deed for that property taken in your name?

A. Simply because when he bought the house for me I was thinking of buying the other lots; there were then four vacant lots, and I was thinking of buying the four, and I concluded to let it be in his name until I decided what I should do; afterwards, in a year's time, I bought the other and have the lot; then he had them made to me.

150 Q. You never asked him for a deed before that time?

A. No, sir.

Q. And the other lot was purchased in June, 1883?

A. Yes, sir.

Q. And the deed to you was made in December, 1883?

A. Yes, sir.

Q. Why did you let six months go by in that way before having the deed made?

A. Simply because I had perfect confidence in Mr. Miller and knew that it was all right.

Q. Did you not know that he might have died at any time?

A. He might have died, of course.

Q. Were you not afraid of that?

A. No, sir; I was not afraid of his dying.

Q. Were you not afraid of any accident happening by which you might lose this property?

A. No, sir; I had perfect confidence in him.

Q. Your brother-in-law stated the other day that the deed of December, 1883, from John L. Miller and wife to yourself of these three lots was in his handwriting.

A. Yes, sir.

Q. Do you know where he was?

A. Right here in this city, in my house.

Q. Did you see him write it?

A. Yes, sir.

Q. At whose request was it written?

A. It was written at my request.

Q. Had you previously consulted Miller about it?

A. We had talked it over and decided when my brother-

151 in-law came to Washington we would have him attend to it.

Q. Could you not find anybody else in town to write you the deed?

A. I suppose we could.

Q. Why did you wait for Mr. L. C. Tallmadge to write it?

A. It was in Mr. Miller's hands and in good hands, and I left it there.

Q. If the property was in such good hands and you were not afraid of his dying, why was it made in December, 1883? Why did

you wait until that time so as to have your brother-in-law, Mr. Lewis C. Tallmadge, write it?

A. He was in the city here. He was from Chicago, and we were talking about the property, and I told him that we thought we would have it fixed, and he wrote the deed out and we had it executed the next day.

Q. You say that you had talked about that. Was this deed prepared in the morning or evening?

A. Well, that I do not know, sir. It was prepared in my house, but I could not tell you that now.

Q. Was it acknowledged by Miller in your presence?

A. It was acknowledged; not in my presence; it was sent to Mr. Miller's house.

Q. It was sent to Mr. Miller's house?

A. Yes, sir.

Q. The same day?

A. I think the next day or the day or so after that; about that time.

Q. Now, you say that that deed was written by your brother-in-law at your request?

A. Yes, sir.

152 Q. Who delivered the deed to you after it had been executed by Miller and wife?

A. Mr. Miller brought it to the house.

Q. From September, 1882, until December, 1883, this property was in the name of Miller according to the land records of this District?

A. Yes, sir.

Q. I suppose that you know that it remained in his name on the land records of the District until the first day of October, 1888?

A. Yes, sir; I know now, but I did not think that it was so at that time; I supposed that it had been recorded.

Q. Did you see that deed from the time of its execution by Miller and wife and delivered to you until it was recorded?

A. It was in my house, but I supposed that my husband had had it recorded. I had asked him to have it recorded for me and I supposed that it had been done, but he was traveling away most of the time.

Q. Did you not know—was the deed around the house?

A. I had not seen it. It had been lying in the house, but I thought it had been recorded.

Q. Where?

A. In a private box.

Q. Who carried the key?

A. Mr. Tallmadge carried the key, but he had neglected having it done because he was out of the city at the time.

Q. You had no access to the box?

A. No, sir.

153 Q. You mean to tell us, from the 27th day of December, 1883, when that deed was executed, until June 16th, 1888, you had never examined that deed?

A. No, sir; I supposed it had been recorded.

Q. Had you not seen it?
A. No, sir; but I supposed it had been recorded.
Q. Did you know that it ought to be recorded?
A. Yes, sir; I knew that it ought to be.
Q. When did you become advised first that Elizabeth M. Houchens, Ella Goudy, and Harry Miller, on the 16th day of June, 1888, in the courts of this city, instituted a suit for the sale of the property?
A. Mr. Duhamel notified me. I could not say just when it was, but I was very much surprised at it, because I am not acquainted with the people at all and did not know any of them. I was surprised when I heard it.
Q. You came, then, to see Mr. Duhamel, did you?
A. Yes, sir.
Q. At the time that you became advised of this matter where was your husband?
A. I do not know whether he was here or away. I presume he was here, but I do not know, as he travels a great deal of the time. I could not tell you.
Q. You cannot positively answer the question as to where, when you became advised by Mr. Duhamel of the pendency of this suit, your husband was?
A. No, sir; I do not know where he was.
Q. Can you not recollect whether you conferred with your husband or not before you went to see Mr. Duhamel?
A. I do not know; I could not tell now.
154 Q. Mr. Duhamel sent you a note through the post?
A. He notified me verbally.
Q. He came to see you personally?
A. Yes, sir.
Q. At your house?
A. Yes, sir; he was at my house.
Q. When this suit was going on in the court?
A. Yes, sir.
Q. Did you tell Mr. Duhamel at that time that you had bought the property?
WITNESS: That I had bought it?
Q. Yes.
A. He knew that I had bought it.
Q. Did you tell him that you had the deed?
A. Yes, sir.
Q. Were you advised by him to put the deed of record?
A. Yes, sir; I think I was.
Q. Can you tell me about what day of the month it was that Mr. Duhamel called on you?
A. No, sir; I could not.
Q. Can you say whether it was in the month of June last year or not that this suit was commenced?
A. No; I do not know when it was. I could not say.
Q. Was it not extremely warm weather?
A. That I do not know.

Q. But at the time that Mr. Duhamel did you see you told him that you had this deed?

A. I supposed that it had been recorded.

Q. Did you show him the deed?

A. No, sir; I supposed the deed had been recorded.

155 Q. Did you tell him that you had the deed?

A. I told him that I had the deed.

Q. When did you first show Mr. Duhamel that deed? Please state when and where.

A. I do not know where exactly or how long ago it has been.

Q. You showed it to Mr. Duhamel?

A. Yes, sir.

Q. You do not know whether it was at your house or at Mr. Duhamel's office?

A. It was at the office.

Q. At Mr. Duhamel's office?

A. Yes, sir.

Q. You are positive about that?

A. Yes, sir.

Q. Was your husband present at that interview with Mr. Duhamel?

A. I do not remember.

Q. It seems to me that your memory ought to be quite fresh on such an important subject. Did Mr. Duhamel advise you to put that deed of record?

A. Yes, sir; he did after I found out that it had not been recorded. I supposed that it had been, but after this suit I found out that Mr. Tallmadge neglected it, and it had not been recorded. He had been away traveling and neglected it.

Q. After Mr. Duhamel advised you to put that deed of record did you not record it?

A. Well, it was recorded shortly after that.

Q. How shortly after that?

A. Well, I do not know exactly.

156 Q. Don't you know that it is a fact that you held that deed for three months after Mr. Duhamel and you had a conference upon that subject before you put it of record?

A. I do not know, sir, how long it was. I do not know.

Q. You will be willing to admit one thing, that after Mr. Duhamel did advise you to put that deed of record you held it long enough for these heirs-at-law to sell the property?

A. No, sir; I did not know that they had sold the property.

Q. You have not answered my question. I say that you held that deed at least long enough, after Mr. Duhamel had advised you on this subject, so that these heirs-at-law might sell, execute a deed for it, and put that of record. You will admit that?

A. I do not know that.

Q. You do not know that?

A. No, sir.

Q. Why did you commence this suit if you did not know that?

A. I heard it.

Q. If you did not know that these heirs-at-law had sold this real estate, and that Wallace Kirby was a purchaser of it, why did you institute this suit?

A. Well, I do not know, I am sure.

Q. You do not know why you commenced this suit? How many interviews did you have with Mr. Duhamel before this suit was commenced?

A. Why, I had a few.

Q. Mr. Duhamel called at your residence, as you have just stated, and advised you that these heirs-at-law, Elizabeth M. Houchens, Ella Goudy, and Harry Miller, had commenced a suit for
157 the sale of this property. Is that correct?

A. Yes, sir.

Q. And that a suit was pending in the court at that time. Is that correct?

A. Yes, sir.

Q. And thereupon you told him that you owned the property?

A. I owned the property.

Q. And that you had a deed for it?

A. Yes, sir.

Q. And you cannot say whether at that time or not you showed him the deed?

A. I did not show him the deed at that time.

Q. But the deed was exhibited to him at his office?

A. Yes, sir.

Q. How long after he had seen you at your residence was it before you showed him the deed—the next day or the day after?

A. It was some time after. I would not say positively just how long.

Q. And you say that he advised you to place that deed of record?

A. No, sir; I did not.

Q. Don't you remember that a moment ago you said that he had advised you to put that deed of record?

A. I do not remember saying that.

Q. Which do you wish to say now—that he did advise you or did not advise you?

A. I say he did not advise me.

Q. At whose advice did you on the 4th day of October, A. D. 1888, say that that deed of yours was placed of record?

158 A. At Mr. Duhamel's advice.

Q. When did he advise you to put it on record; on that day?

A. A short time before that.

Q. How long before?

A. Well, I do not know really; I cannot say.

Q. When Mr. Duhamel told you at your house that these heirs-at-law had commenced a suit for the sale of the property, which you claim belonged to you and on which you reside, were you not a little anxious about it?

A. I was very much surprised. I could not have been anxious

at the time, because I supposed that the deed was of record and everything was clear in my name. I supposed, of course, that the deed had been recorded. If I had not thought so, I would have been anxious, but I supposed everything had been recorded.

Q. How long have you known Mr. Duhamel?

A. I have known him several years.

Q. Does he call frequently at your house?

A. Not very frequently, but I have known him for several years.

Q. Had he been there within a year before?

A. I do not know how soon before that.

Q. Did he call that evening on this special business?

A. Yes, sir.

Q. Did he not when he called on you tell you that this suit was pending—that this suit of these heirs-at-law—for the sale of this property?

A. Yes, sir.

Q. Did he not tell you that your deed was not of record?

159 A. I do not know that he knew it.

Q. I ask you whether he told you.

A. He did not know it at the time; I had supposed that the deed had been recorded.

Q. What did he tell you about the suit?

A. I do not remember the conversation.

Q. But it was about that suit that he called to see you?

A. Yes, sir.

Q. If Mr. Duhamel at that time did not tell you that your deed was not of record among the land records of the District of Columbia, why did you go to see Mr. Duhamel about it?

A. I found upon asking my husband that it had not been recorded; I found that out afterwards.

Q. Did your husband tell you the reason why it had never been recorded?

A. He told me that he had neglected it; that he had been out of the city a great deal on business and he had neglected it.

Q. If you felt that this deed was on record, and you have said that you supposed it was, why should you be alarmed when Mr. Duhamel came to see you and told you that these heirs-at-law had commenced this suit?

A. I was not alarmed at that time, for I supposed that I had had the deed placed upon record.

Q. Why did you examine the matter subsequently?

A. When I inquired of my husband he told me that he had neglected to have it recorded.

Q. Did he take that deed out of his private box of which you have spoken?

160 A. Yes, sir; and showed it to me.

Q. It had never been recorded?

A. No, sir; not at that time.

Q. And you came to see Mr. Duhamel?

A. Yes, sir.

Q. And he advised you to put that deed of record?

A. Yes, sir.
Q. Why did you not put it of record, then?
A. I do not know; I thought it was all right.
Q. If you thought it was all right not to have that deed of record, why did you ever take the deed from Miller?

The solicitor for the complainant objects to the question as irrelevant and a cross-examination as to matters brought out by the counsel himself.

A. He gave it to me.
Q. How many interviews did you have with Mr. Duhamel at his office?
A. Several.
Q. How long a time intervened between your last consultation with Mr. Duhamel and the time when you did put the deed of record?
A. Why, I do not know, really, sir.
Q. Did you take it over and put it of record yourself?
A. I think so.
Q. Did you go from Mr. Duhamel's office to the recorder's office?
A. No, sir.
Q. Before putting it of record did you go home after being at Mr. Duhamel's office?
161 A. Yes, sir; I think so.
Q. Did you go from home to the recorder's office in a carriage or street car, or did you walk?
A. I do not know how I got back.
Q. You do not remember that?
A. No, sir.
Q. You took a receipt for the deed yourself?
A. Yes, sir.
Q. And paid for its being recorded?
A. Yes, sir.
Q. Before you put that deed of record Mr. Duhamel had advised you that that property had been purchased from Elizabeth M. Houchens, Ella Goudy, and Harry Miller by Mr. Wallace Kirby, had he not?
A. Yes, sir.
Q. And you mean to say that you waited from the time that he first advised you to put your deed of record until after he informed you that the other deed had been recorded before you placed your deed of record?
A. Yes, sir.
Q. Why did you put the deed of record then?
A. Why, no cause at all, only as soon as I found out that it had not been recorded I thought it ought to be recorded; it was all right. I knew it was all right as long as I held the deed. The property had been deeded to me.
Q. I hand you now two receipts attached together by a pin. One of them is dated March 14, 1884, and the other is dated Sept. 15, 1884, and each one purports to be a receipt by Henry H.

Bates from John L. Miller of the sum of one hundred and
162 twenty dollars in payment of interest. Will you tell me why, if you owned this property, these receipts which you now are examining were made in the name of Miller instead of your own name?

A. Only because, as I said, Mr. Miller attended to the business for me and paid the notes for me and I reimbursed him the money.

Q. You paid him for attending to this business?

A. No, sir; I did not pay him for attending to it, but if he paid for me I paid him the money pack.

Q. When did John L. Miller die; what month?

A. February, 1888.

Q. Who has attended to your business for you since?

A. I attended to it myself.

Q. Mr. Miller during his lifetime paid this interest for you with your money?

A. At times he paid the notes for me, and here are receipts that are in his name. He paid for me if they are in his name. He paid them and I always reimbursed him.

Q. Where did you get the money?

A. As I say, my father lived with me and he was always giving me money and I could always meet the interest on these notes whenever they became due.

Q. The interest was a hundred and twenty dollars every six months?

A. Yes, sir; sometimes they paid me that and sometimes more.

Q. Did your father board with you?

A. No; he did not board with me.

Q. He did not pay you any stipulated board?

163 A. No, sir; my father and mother stayed with us.

Q. None of them paid you any board?

A. No, sir; they did not pay me any board.

Q. You kept the entire family?

A. Yes, sir; my father would give me money sometimes—every month or whenever I would need it.

Q. And you say that you always had money sufficient to pay this interest?

A. Yes, sir; I paid my interest and my father would help me when needed.

Q. Where would you see Mr. Miller to give him the hundred and twenty dollars to pay the interest?

A. He was at our house every day or I was at his house. We were intimate friends.

Q. Where did he live?

A. On Eleventh street between H and I.

Q. You knew Mr. Miller owned other property in his lifetime?

A. At some time he did.

Q. Do you remember that he sold his property?

A. I do not.

Q. You knew that he had sold his property?

The solicitor for the complainant objects to the question as not proper cross-examination.

A. He had property. I had nothing to do with it. I paid the money for my house and Mr. Miller never paid a dollar on the house. It was my money and not a dollar came out of his pocket.

Q. I mean he paid the interest for you.

A. Yes, sir; he paid it for me and I gave him the money
164 to do it or reimbursed him. I am owing some money now on my house, I am sorry to say.

Q. Do you owe any interest on account of the trust on the property?

The solicitor for the complainant objects to the question as irrelevant and not cross-examination.

A. I do not know whether it was paid the last time or not. Mr. Miller paid for me when he was alive.

Q. I hand you now a receipt dated March 15, 1888, signed by Henry H. Bates, in which he receipts for a hundred and twenty dollars in the payment of interest in this deed of trust, and this receipt says, "Received of the heirs of John L. Miller, deceased," and, having handed you that receipt, I now ask you by whom that money was paid to Mr. Bates on your account.

A. Well, it was paid through Mr. Tallmadge for me.

Q. I am asking you particularly about the receipt which I have handed to you.

A. I suppose it is meant for me. I do not know the heirs.

Q. Are you an heir-at-law of John L. Miller, deceased?

A. No, sir; I am not an heir-at-law.

Q. Who paid that hundred and twenty dollars?

A. It was paid through me, of course.

Q. Who paid it for you?

A. I gave it to my husband to pay for me.

Q. Why did he take the receipt in the name of the heirs-at-law of John L. Miller, deceased?

A. I told you I did not know.

Q. Why did you tell him to take the receipt in the name
165 of the heirs-at-law of John L. Miller, deceased?

Mr. DUHAMEL: Did you ever see that receipt before?

A. I have.

(By Mr. BAILEY:)

Q. Did you ever notice that receipt before?

A. Yes, sir; I have seen it. I see everything that comes into my house, of course, which is mine.

Q. Did that receipt pass into your hands at the time that the money was paid?

A. Yes, sir; the receipts are always passed over to me from Mr. Bates.

Q. Where did you obtain the receipts for interest on these lots preceding the date of that receipt of March 15, 1888?

A. They came through Mr. Miller; all the other receipts, of course, before his death.

Q. You have no explanation to make, then, as to why that receipt should be made in the name of the heirs-at-law of John L. Miller, deceased?

A. No, sir.

Q. Do you claim to own this property?

A. I have it, and it is mine.

Q. By whom did you send the money to Bates?

A. Why, I sent it through my husband.

Q. Are you positive of that?

A. Yes, sir; I am positive of that.

Q. Was it cash?

A. Yes, sir.

Q. In your examination-in-chief, with reference to the purchase of these lots by Miller for your benefit, you invariably use the words "we bought the property," "we paid for the prop-
166 erty." Who do you mean by "we"?

A. I went, generally, for everything, but whenever I wanted my husband to attend to anything he went, but it was my money that paid for all. I said that sometimes my husband attended to it and sometimes my father.

Q. And that is what you meant when you said "we"?

A. Yes; or any other member of the family who would go. That is what I meant.

Q. I hand you now a receipt signed by Henry H. Bates, dated March 12, 1889, which purports to be a receipt for some one hundred and twenty dollars paid by Henry H. Tallmadge as interest, of this date. I will ask you now why on this last occasion you had this receipt taken in the name of your husband rather than in the name of the heirs-at-law of John L. Miller, deceased.

A. I had no motive whatever, only I gave Mr. Tallmadge the money and he paid it to Mr. Bates.

Q. We find among these receipts (exhibits) some given in the name of John L. Miller, and then this one to which I have called your attention given in the name of the heirs-at-law of John L. Miller, deceased, and then, again, in the name of Henry H. Tallmadge, and I ask you to explain, if you can, why these receipts have been taken in such a variety of forms.

A. I do not know that I can explain that. I paid the money, I know that, every time.

Q. Where was the property located that you have said was sold by your father?

A. On I street between Ninth and Tenth.

Q. What was the number of the house?

167 A. I do not remember now.

Q. When was that property sold?

A. It was sold about 1883.

Q. Do you recollect what it sold for?

A. Not exactly.

Q. Well, within a thousand dollars?

A. About five thousand dollars.
Q. How large a deed of trust was on it?
A. No deed of trust; it was a cash sale.
Q. That was the property that your father owned?
A. Yes; but he owned other things.
Q. Any other real estate?
A. No other.
Q. Who administered on this estate?

The solicitor for the complainant objects to the question as irrelevant, not cross-examination, and inadmissible. It has already been answered who took possession of his effects when he died.

A. Why, he left it with me; everything was left with me.
Q. He had other children?
A. Yes, sir; but I always attended to everything for him.
Q. What did those effects consist of?

The solicitor for the complainant objects to the question as irrelevant, not cross-examination, and the witness can decline to answer, as it is her private business.

WITNESS: That is my private business. I decline to answer.

MARIA E. TALLMADGE.

Subscribed and sworn to before me this the 23rd day of May, 1890.

EDWIN FORREST,
Examiner in Chancery.

168 And thereupon the solicitor for the defendants requested the examiner to certify to the court said question for its determination whether the same was a proper one and whether the witness should answer the same.

In accordance with such request, and on refusal of the witness to answer, the examiner certifies the matter to the court for instructions in the premises.

EDWIN FORREST,
Examiner in Chancery.

Thereupon the further examination of the witness was continued until notice.

EDWIN FORREST,
Examiner in Chancery.

Subsequently the solicitor for the defendants notified the examiner that he withdrew his request for a certification to the court, and, further, that he had no other questions to ask the witness.

169 In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE
vs.
WILLIAM W. KIRBY *et al.* } In Equity. No. 11382.

GENTLEMEN: Please take notice that I will on next Monday, Jan'y 27, 1890, at three o'clock p. m., at the office of W. K. Duhamel, Esq., No. 460 La. Ave. N. W., Washington, D. C., proceed to take testimony of such other witnesses on behalf of the complainant as may be produced before me.

You are requested to be present.

Respectfully,

EDWIN FORREST,
Examiner in Chancery.

To William T. Bailey, L. Cabell Williamson, W. Willoughby.

Service accepted by receipt of copy of above.

(Signed) WM. T. BAILEY,
Solicitor for Defendant Kirby.

(Signed) L. CABELL WILLIAMSON,
Solicitor for Defendants Goudy, Miller, and Self.

(Signed) W. WILLOUGHBY,
Solicitor for Defendant Houchens.

170 MONDAY, *January* 27, 1890—three o'clock p. m.

Met pursuant to notice.

Present: Mr. Duhamel, solicitor for the complainant; Messrs. Bailey and Williamson, solicitors for the defendants; the examiner,

And HENRY HOBART BATES, a witness produced on behalf of the complainant, of lawful age, being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. DUHAMEL:

Question. Give your residence and occupation.

Answer. Washington; examiner-in-chief of the Patent Office.

Q. Are you the gentleman who held the notes and was the owner of the property which Mrs. Tallmadge bought of you on R street, No. 1313, in this city?

A. I am.

Q. And you owned it prior to Mrs. Tallmadge's purchasing it?

A. Yes, sir.

Q. Did Mrs. Tallmadge visit you to make inquiries in regard to purchasing the property?

A. Mr. Tallmadge did.

Q. Did she call on you?

WITNESS: Shall I give the facts?

Q. Give the facts.

A. I advertised the property for sale in the Evening Star one day towards the last of August, 1882, and on the same day on which the advertisement was to appear Mr. Tallmadge came up be-
171 fore I had seen the advertisement. It was early in the evening. He was a stranger to me, and said he had seen the property advertised for sale and wanted to inquire about the terms, and so forth, and talk about it. I gave him the terms and talked awhile. Mr. Tallmadge wanted to find out what was the lowest price, and I believe he talked as a man usually does when he undertakes to buy a piece of property, and I told him what it was. He looked over the property, and I believe he said that it pleased him, and that he should like to have Mrs. Tallmadge see it, which he would do the next day before concluding the terms.

Q. Did she come with him?

A. The next evening, according to my recollection—late in the evening—Mr. and Mrs. Tallmadge came and looked at the house—looked it over—and it appeared to be satisfactory. The terms were as I originally mentioned them.

Q. Did she pay a bonus?

A. I was paid a hundred dollars down to bind the bargain, and I cannot remember whether it was that evening or the next day that there was an arrangement made whereby a memorandum of agreement should be drawn up. My conversation was with Mr. Tallmadge entirely. Mrs. Tallmadge was there, but it was Mr. Tallmadge that I had the conversation with, and the arrangement was that I should make a memorandum of agreement, which I did. I think it was the next day. I came home early from the office and I drew up the memorandum, and I received a hundred dollars, I think, from Mr. Tallmadge, and Mr. Tallmadge told me, I think, for the first time, that Mr. John L. Miller was the purchaser.
172 I was a little surprised, but I made no inquiries, however, because I think I told him that it did not make any difference to me who was the purchaser as long as I got my money, and the bargain was made. After that, I think, I was told that I should meet Mr. Miller and draw up the deeds, and asked to name a place where I could meet him, and I named Mr. Edson's office on F street. A few days after that, I do not exactly remember the date, we had some preliminary talk about when I should move out and give possession, and I said I did not want to go until the middle of September. Mr. Tallmadge demurred a little to that, but finally he consented, and we met according to agreement at Mr. Edson's office. I went there with my wife and found Mr. Miller with his wife there, and was introduced to him for the first time. He was a stranger to me before that. The deeds were drawn and signed, the deed and deed of trust properly drawn, and Mr. Miller paid me five thousand dollars, and the other five thousand was provided for by notes and a deed of trust.

Q. Subsequently to that how about the payment of interest on the secured notes?

A. I might say right here, for I might forget it, when I said Mr. Miller paid me five thousand dollars he overpaid me, and I re-

funded the money afterwards and took his receipt. He overpaid me, forgetting the hundred dollars to bind the bargain, which I, too, forgot at the time, but that was mere detail.

Q. How about the interest? Who paid the interest? Who has paid the interest from the time that Mr. Miller purchased until now?

173 A. I usually received it from Mr. Tallmadge. I generally received it either from Mr. Tallmadge in person or by check or through the mail, and in one, two, or three instances, perhaps, I do not recollect more than two, I received a check from Miller and Jones, signed "Miller and Jones."

Q. How as to the thousand-dollar note?

A. This thousand-dollar note I received in this way: I received a check for eleven hundred and fifty dollars, which was for the thousand dollars due and a hundred and fifty dollars interest due. I received it from New York in a letter from Mr. Tallmadge, according to my recollection, and was instructed in that letter to forward the receipt to him and the note, canceled as here it is (referring to Complainant's Exhibits Nos. 14 and 15). He gave me the address, which is here stated in the letter, and I forwarded it to that address.

Q. Look at these (referring to Complainant's Exhibits 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13) and say whether these are your signature- to these receipts.

A. These are the receipts that I gave when I received the payments of interests. I generally made them out as they are here written. I notice the earlier ones are written like this one: "Received of John L. Miller, per H. H. Tallmadge," through abundant caution of mine, as the notes were in Mr. Miller's name and the money was handed to me by Mr. Tallmadge, so that I put both names in the receipt. I did not have any specific reason for it and the last two or three are to H. H. Tallmadge. After the death of Mr. Miller I remember I was in a quandary. When I was going to draw it up in my usual way it occurred to me that he was

174 dead, and I put in there "Received of the heirs of John L. Miller," and wrote Mr. Miller, and then I put Mr. Tallmadge's name also as the man who gave me the money; that was not a very correct way to draw a receipt.

Q. Did you not understand from Miller and understand from the transaction as between him and yourself that the property was not his property, but the property of Mrs. Tallmadge, and that he was simply a trustee?

A. I never had any conversation with Mr. Miller. I simply met him at Mr. Edson's office with the deeds to go through the usual formalities; there was very little said; he handed me the money and I affixed my signature to the deed.

Q. Do you know the shape of that money—the shape it was in—whether it was in a check or money or whether he handed you all money or not?

A. I do not know whether it was money or a check. I think it was money, for I would not have taken a check, though I cannot answer—I will not answer that.

Q. Do you remember about the time that this property was sold or did you hear anything about a sale of it by some heirs of Miller to the defendant Kirby?

A. No; I never heard anything about it.

Q. Did you ever meet Mr. Kirby?

A. I did. Mr. Kirby called on me at my office and introduced himself as Mr. Kirby.

Q. What did he say?

A. He asked me if I was the person who sold a house on R street, number 1313, to Mr. John L. Miller, and I told him I was.

175 Q. What else did he say?

A. He told me, I think I understood him to say, that he had bought the property?

Q. Did he say anything else to you?

A. He said he wanted to know if I did not want to release the lien on it and take the money; he said he was ready to pay it; that he had the money in bank and he wanted to clear off the indebtedness entirely. That was his proposition, as I understood it, and I declined it.

Q. Had you ever had any communication with him before that?

A. Not at all.

Q. You never knew him before that?

A. I never did.

Q. Has he ever been to you since that?

A. He called on me once since; he stopped in merely to ask me if I had changed my mind, and I told him at the time I was not in any hurry. I felt a little anxious about it, as he was a stranger to me, and it was a surprise to me that the property had been sold. I did not give him any more definite answer, but, realizing that he was a stranger, I, however, gave him civil answers and told him that I might change my mind, and if I wanted the money I would let him know about it. He came in some time afterward and wanted to know if I had changed my mind about it, and I told him I had not at present; that I was getting interest and I was satisfied.

Cross-examination.

By Mr. BAILEY:

176 Q. Your first connection with respect to the sale of this property, you say, was with Mr. Tallmadge?

A. Yes, sir.

Q. The husband of the complainant in this cause?

A. Yes, sir; my first interview with him was on the evening of the first advertisement.

Q. And he paid the hundred dollars cash as a bonus?

A. That is my recollection. Yes; I can say positively that he did, because I did not know Mr. Miller at that time.

Q. In whose name was the deed made?

A. John L. Miller and wife.

Q. How long after the payment of that hundred dollars was it before that deed was executed?

A. I think it was as much as nearly two weeks; I think so, but I will not be positive about dates; it was some days afterwards.

Q. Did any one explain why that deed was made in Miller's name?

A. No explanation was made; I made no inquiries.

Q. You say that the payment of the note for one thousand dollars you received from Mr. Tallmadge in New York and the money to pay it was by check?

A. A check for eleven hundred and fifty dollars.

Q. Was that check signed by Mr. Tallmadge himself?

A. That is very difficult for me to answer.

Mr. DUHAMEL: The letter shows what the check was.

WITNESS: The check will show, if it is in existence.

Mr. DUHAMEL: I think the letter will explain that.

WITNESS: When I see it I can tell (paper here shown witness). This gives the name of the maker of the check.

177 Q. What is his name?

A. Clarence Cary, it seems.

Q. Of where?

A. Of New York, it appears by the letter, as the check was drawn on the Mercantile National Bank of New York.

Q. Can you fix the date when Mr. Kirby first called to see you?

A. I do not think I can. I have no means of recollecting that. I did not make any memorandum of it. It did not impress itself on my memory.

Q. Was it not in the month of September?

A. Very likely it was.

Q. Did Mr. Kirby not say to you at that time—the first visit—that his object in calling to see you was to ascertain from you how much of the record indebtedness on that property had been paid to you?

A. I think he did ask me such a question.

Q. Did he not ask if the interest on the remaining four notes had been regularly paid?

A. He did.

Q. And then he inquired, was it, at that interview or at the subsequent interview and made a proposition to pay the four notes?

A. My recollection is that it was at that interview that he wished to take them up and release the property.

Q. And you think that was in the month of September?

A. I think so. I say it is possible, but I could not identify the month or the time. The time of the payment of the interest

178 was in September, and that leads me to think that it must have been a few days before that before the time of payment of the semi-annual interest. September 12th is the date when the deeds were drawn.

By Mr. WILLIAMSON:

Q. Will you tell me who was present in the office on F street, of Mr. Edson's, when the transaction was finished?

A. Mr. John L. Miller and wife, myself and wife, and Mr. Edson—the younger Edson—I forget his first name; not the real-estate agent but the patent attorney.

Q. Not John Joy?

A. No, sir.

Q. The other one—his brother?

A. Yes, sir. I have a sort of impression that Mr. Tallmadge's brother introduced Mr. Miller to me, but I won't be certain, and I do not know whether he remained or not.

Q. Was Mrs. Tallmadge there?

A. I think not.

Q. Now, refresh your recollection and tell us whether the money was paid in cash or by check, referring to your custom in such matters as that?

A. I never sold a piece of real estate before and so I had no custom about it; but I think I should have asked for money, but I cannot recollect. My memory fails me as to whether I actually received a check or its equivalent.

Q. Your impression is that it was cash?

A. Yes, sir; although I would have taken Mr. Miller's check, as he was a well-known business man. I do not think I would have objected to taking his check, as he was perfectly solid.

Q. You say you would not have objected to taking his check?

179 A. No, sir; I would not. He was perfectly good for it.

Q. He was the man that handed you the check or money, whatever it was?

A. Yes, sir; he is the man who executed the paper on that day.

Q. Do you recollect being in my office after a bill was filed by the Miller heirs?

WITNESS: What office was that?

Q. 492 Louisiana avenue, my office.

A. I do.

Q. Do you remember having any conversation with me there?

WITNESS: Are you Mr. Williamson?

Mr. WILLIAMSON: Yes, sir.

A. Yes; I had a conversation with Mr. Williamson.

Mr. DUHAMEL: I object to this as not cross-examination.

Mr. WILLIAMSON: It is along the line of this interest that I am going to ask.

(To witness:) Do you remember telling me in that interview anything about the payment of interest and who had paid it to you?

A. I do not remember distinctly that question or the details of the conversation.

Q. Up to the time of the death of Mr. Miller whom did you believe owned the property?

Mr. DUHAMEL: I object to that. I hardly think it is competent.

WITNESS: My belief and impression—is that what you want?

Mr. DUHAMEL: That is what they are asking for. I do not think it is competent. They have a right to ask.

(By Mr. WILLIAMSON:)

180 Q. Did you know anybody but Mr. Miller in the transaction up to his death?

A. I believed Mr. Miller was acting as agent for Mr. Tallmadge; that was my impression. I did not ask any questions at the time. I made no inquiries and no information was given to me. I did not consider it any of my business. I had the impression that for some reason or other Mr. Miller was the agent and wished to act as Mr. Tallmadge's next friend in the matter. I did not make any inquiries of him about it.

Q. And that was the impression that you were under?

A. Yes, sir.

Q. And you have no reason for that impression as nothing was said?

A. I asked no questions of Mr. Tallmadge and he gave me no information except that Mr Miller was to have the property deeded to him.

Q. Did not Mr. Tallmadge tell you that Mr. Miller was the purchaser?

A. Yes, sir.

Q. And was he not introduced to you as such?

A. No, sir; he was simply introduced to me as Mr. Miller.

Q. Did you know at the time he was introduced to you that he was the purchaser?

A. I knew that he was the party who was to sign the deed.

Q. How did you know it?

A. I knew that from what had been told me about it.

Q. Who told you?

A. Mr. Tallmadge.

Q. — Mr. Miller ever pay any of that interest in person?

A. Never.

181 Q. Did he not come in person to you and by check or otherwise pay the interest?

A. Never, that I recollect; no.

Q. Did he not send his personal check to you?

A. Not that I recollect.

Q. Did he ever send a check of Miller and Jones?

A. I think he did on two occasions. I remember distinctly on one occasion when he sent it on the wrong bank, and I went and found him at his house, and that was the only time that I have seen him since—that is, since the signing of the deed. He apologized; they threw out the check at the bank; said in giving the check he accidentally picked up a check on the wrong bank and he gave me a proper check.

Q. And that was the check of himself and Jones?

A. That is my recollection.

Redirect examination.

By Mr. DUHAMEL:

Q. You have been asked about your impressions as to what Mr. Miller was, and you think you had the impression that he was an agent. Have you any more of an impression that he was an agent for Mr. Tallmadge than that he may have been for Mrs. Tallmadge?

A. No; not at all. I simply mentioned Mr. Tallmadge because Mr. Tallmadge was a gentleman and I naturally talked with him.

Q. Now, Mr. Bailey has sought to try and fix that transaction with Kirby as having been in September. You have no certain knowledge whether it was September or October?

A. It may have been the first of October. I cannot recol-
182 lect the date when Mr. Kirby came to see me.

Q. Do you recall whether or not when he first mentioned the subject in regard to the interest due you asked him what he had to do with it, or anything of that kind, and in response to that he said that he had bought it up?

A. I do not think it was an inquiry of mine. I am mostly very reticent about making inquiries. I think he told me voluntarily.

Q. Do you remember whether the agreement or contract of sale was in the name of Mr. or Mrs. Tallmadge? Have you any recollection of that and as to who handed you the hundred dollars?

A. I do not recollect, but the agreement is in existence probably, and it would be the best evidence. It was a memorandum of agreement such as ordinarily passes in transactions of that kind and a payment of a hundred dollars to bind the bargain.

Q. Do you recollect, when all that passed between you and Mr. Tallmadge, whether Mrs. Tallmadge was present?

A. I am not certain about that. If it was the evening that she looked over the house, she was present; but if it was the next day that we drew up the memorandum of agreement she was not present, but Mr. Tallmadge was.

(Signed) HENRY H. BATES.

Subscribed and sworn to before me this the — day of February, A. D. 1890.

—— ——,
Examiner in Chancery.

The further taking of testimony was adjourned until January 28th, 1890, at three o'clock p. m.

183 JANUARY 28, 1890—three o'clock p. m.

Met pursuant to adjournment.

Present: Mr. Duhamel, solicitor for the complainant; Mr. Bailey, of counsel for the defendants, and the examiner.

Mr. DUHAMEL: I offer this letter in evidence.

Letter referred to and offered in evidence was marked as "Complainant's Exhibit M. E. T. No. 20."

I also offer in evidence the record in case No. 11204, equity.

I offer in evidence the deed from Bates to Miller, which is recorded in Liber 1015, folio 418.

I also offer in evidence the deed of trust which Miller gave to secure the deferred purchase-money, which is recorded in Liber 1015, folio 420.

I also offer in evidence the deed from Clagett to Miller, recorded in Liber 1063, folio 197.

I also offer in evidence the deed of trust which Miller gave to secure the Clagett notes, which is recorded in Liber 1048, folio 161, and also the canceled notes, and the same are marked as Complainant's Exhibits M. E. T. Nos. 21, 22, and 23, respectively.

I also offer in evidence the deed from Miller to the complainant, Mrs. Tallmadge, which is recorded in Liber 1342, folio 120.

I also offer in evidence the last will and testament of John A. Miller, which was probated on the 27th day of April, 1888, and the same is duly of record in the office of the recorder of wills in this District.

184 I also offer in evidence the deed to Kirby, recorded in Liber 1335, folio 295.

I also offer in evidence the deed of trust which Kirby gave, and the same is recorded in Liber 1335, folio 299.

All of which deeds above referred to are recorded in the office of the recorder of deeds for the District of Columbia.

By consent an adjournment was taken until Monday next, February 3, 1890, at three o'clock p. m.

EDWIN FORREST,
Examiner in Chancery.

MONDAY, *February* 3, 1890—three o'clock p. m.

Met pursuant to adjournment.

Present: Mr. Duhamel, solicitor for the complainant; Mr. Bailey, of counsel for the defendants; the examiner,

And LOLA MILLER, a witness produced on behalf of the complainant, of lawful age, being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. DUHAMEL:

Q. You are the widow of John L. Miller?

A. Yes, sir.

Q. Did you sign a deed with your husband to Mrs. Tallmadge, the complainant? And, if so, look at this deed, Complainant's Exhibit M. E. T. No. 2, and see whether or not that is your handwriting.

185 A. It is.

Q. Have you any idea about when that was?

A. No, sir.

Q. It was done by your husband in his lifetime?
A. Yes, sir.
Q. I show you an answer sworn to by you some years ago in a suit brought by the heirs of your husband in which you were made a party. Is that your signature to it (referring to witness' answer in equity cause No. 11204)?
A. Yes, sir.
Q. Had your husband any interest in a house on R street occupied by Mrs. Tallmadge at the time of his death?
A. Not that I know of.
Q. Was he receiving any rent from it at that time?
A. No, sir.
Q. Did you understand what the deed was at the time you conveyed to Mrs. Tallmadge?
A. He told me to come down and sign it, and that is all that I know about it.
Q. At the time when you answered the suit brought by the Miller heirs, or about that time, did any one come to you and ask you in regard to what your rights were in this house on R street—did any one ever approach you?
A. I do not know that any one ever did.
Q. Did you ever pay any debts on the house since your husband's death—any taxes or anything?
A. No, sir.
Q. You never have had any possession of it, have you?
A. No, sir.

186 Cross-examination.

By Mr. BAILEY:

Q. In this answer filed by yourself in the equity suit you say you assigned your interest away in the lifetime of your husband, but that you never signed any deed of trust?
A. I do not know what it is. I do not know what the deed of trust is. I do not know anything about what is in the paper that I signed. I know I signed it and that is all I know.
Mr. DUHAMEL: Let me read it and you may see what you did say.
Mr. BAILEY: I will read it. In paragraph four of your answer you say as follows: "That she (the witness) has no knowledge of the matters set forth in the fourth paragraph of said bill relating to the deed of trust on the said R-street property," and I now ask you if you ever knew of the existence of any deed of trust upon the property.

Mr. DUHAMEL: I object to the question for the reason that the deed of trust is the best evidence, and it should be shown to her with a view of permitting her to see whether or not it is her signature.

A. I do not know anything about any deed of trust. I do not

know anything about it at all. I would just as leave answer if I could, but I do not know anything about it.

Q. Do you recollect whether or not in the lifetime of your husband you signed more than one deed concerning the property on R street?

Mr. DUHAMEL: I object to the question for the reason last given.

A. I won't answer it, because I do not know anything about it.

187 Redirect examination.

By Mr. DUHAMEL:

Q. You won't pretend to say what papers or what deeds you signed with your husband in regard to this R-street property?

A. I could not say, because I do not know.

Q. You don't remember whether you did or did not sign any papers or a deed of trust?

A. I don't remember anything about any deeds of trust at all.

By Mr. BAILEY:

Q. Where were you when you signed that deed to Mrs. Tallmadge?

A. In my own house.

Q. Who brought the deed to you to be signed?

A. I could not tell you.

Q. Was your husband present at the time?

A. He was.

Q. You have a distinct recollection of that, have you?

A. Yes, sir.

Q. Did he tell you then that he was selling a house to Mrs. Tallmadge?

A. I do not know what he did tell me, really; he just told me to sign it and I signed it; that is all I know about it.

(Signed) MRS. LOLA MILLER.

Subscribed and sworn to before me this the 23d day of May, A. D. 1890.

EDWIN FORREST,
Examiner in Chancery.

188 In the Supreme Court of the District of Columbia.

TALLMADGE *vs.* KIRBY *et al.* } In Equity. No. —.

GENTLEMEN: Please take notice that I will proceed, at the request of the solicitor for the complainant, to take further testimony on behalf of the complainant in the above-entitled cause on Monday next,

March 3, 1890, at 3 o'clock p. m., at the office of W. K. Duhamel, # 460 La. Ave. N. W., Washington, D. C.

You are requested to be present.

Respectfully, EDWIN FORREST,
Examiner in Chancery.

To Mr. Williamson, of counsel for defendants; Mr. Bailey, of counsel for defendants; Mr. Willoughby, of counsel for defendants.

Service acknowledged by receipt of copy.

(Signed) WILLIAM T. BAILEY,
Solicitor for Kirby.

189 MONDAY, *March* 3, 1890—3 o'clock p. m.

Met pursuant to notice.

Present: Mr. Duhamel, solicitor for the complainant; Mr. Williamson, of counsel for the defendants; the examiner,

And WILLIAM C. DUVALL, a witness produced on behalf of the complainant, of lawful age, being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. DUHAMEL:

Q. Please state what your business is.

A. I am engaged in the real-estate and fire-insurance business in this city.

Q. How long have you been in that business?

A. Since 1873; about ten or twelve years of that period as a principal.

Q. Are you acquainted with the values of real estate in this city, in the northwest section of the city?

A. I am not an expert. I have a general idea of the values.

Q. Do you know some property on R street belonging to Mr. Tallmadge—# 1313 R street?

A. I know where the location is. I do not recall the house thoroughly.

Mr. DUHAMEL: With your permission, Mr. Williamson, I will withdraw him for the present and place Mr. Towles on the stand.

GILBERT B. TOWLES, a witness produced on behalf of the complainant, of lawful age, being first duly sworn according to
190 law, was examined and testified as follows:

Direct examination.

By Mr. DUHAMEL:

Q. What is your business?

A. My regular business is a patent solicitor, but I have operated some in real-estate matters and managed property.

Q. Do you know the property on R street, # 1313, owned by Mrs. Tallmadge?

A. Yes, sir.

Q. Can you describe that house generally?

A. The lot is about 57 x 100 feet, and it is located on the north side of the street.

Q. Between what streets?

A. Between Thirteenth and Fourteenth.

Q. How near the corner of Fourteenth?

A. It is about midway; about midway between the two streets.

Q. Does the house cover the entire lot?

A. No, sir; it covers about 23 feet.

Q. What style of house is it?

A. It is a press brick with a bay window, stone steps, stone trimmings, and I think, as nearly as I can recollect, the upper story is finished with a mansard roof. I am not positive about that.

Q. Do you know what the valuation of real estate in that square was in August, 1888, in that section of the city?

A. Well, I should take that ground to be worth about $2.50 a foot.

Q. At that time?

A. $2.25 to $2.50 at that time.

191 Q. What do you place the improvements as worth, the house?

A. Well, I should think the house ought to be worth from $8,000 to $10,000.

Q. Would you add the value of the house to the $2.25 to $2.50 in valuing the part of the ground on which the house is?

WITNESS: At the present time?

Mr. DUHAMEL: At that time. What would — value the house at, irrespective of the lot?

A. I should think, if it was my house and my lot—I should want to value it with the $2.50. It is a well-built house. I lived in that neighborhood twelve years and I value the whole thing, house and all, at $2.50 a foot.

Q. What do you place the house at, then; what do you give its value as in 1888?

WITNESS: The house itself, independent of the ground?

Mr. DUHAMEL: Yes, sir.

A. I do not think you could build that house—could build such a house as that—at less than $8,000. It was built by Colonel Fleming. All the partitions are brick, not stuffed partitions, as we usually put in. I was in the house soon after it was finished.

Q. Is there any difference in the cost of building a house now from the cost of building one in 1888 or are the prices the same?

A. I think it is about the same now. There is not much difference between 1888 and the present. I think brick is higher and some material is much higher now than it was then; brick is higher.

Q. Has there been much difference, much increase, in the

192 price of property on the side streets in that locality between August, 1888, and the present time?

A. I think there has been some considerable building done there; some very nice private residences built since then—very handsome private residences. This lot is on the best side of the street, on the north side, with a southerly exposure.

Q. I do not know whether I understood you in regard to the $2.50 or $2.25 a foot. Taking the house and the lot, how would you value the vacant lot; what price would you put upon it in 1888?

A. I think I would value the lot the same as the one the house stands on.

Q. Then when you come to the one on which the house is would you add anything on because of the value of the house?

A. No.

Q. Is not the lot worth more with the house than without it?

A. No; I do not think so, because a man would want to build a house to suit himself, and the house on the lot might not suit the man who desired to buy the premises. It depends altogether upon circumstances, if a man wants a lot to build on for private purposes.

Q. Nevertheless, with that house on it, if a party came along and saw it there, would he not have paid more for the lot with the house on it than without it?

A. If he set out to buy a home; if he wants to buy a house.

Q. You have valued that without relation to the present house on it?

193 A. Independent of the house.

Cross-examination.

By Mr. WILLIAMSON:

Q. You do value the whole thing together as $2.50 all the way through?

A. Yes, sir.

Q. That would be for the house and all, according to the valuation?

A. I value the ground independent of the house; no reference to the house at all.

Q. But that would include the house if any one was buying it, would it not, $2.50?

A. If I was buying the premises I, of course, would consider the house if I were buying it for a home. If I were buying it as a matter of speculation I might look at the matter differently, but I should consider the ground worth $2.50 a foot, and the reason why I speak so positively about it is I lived in the neighborhood twelve years and we have property on Fourteenth street and we value the lot there at $2.50.

Q. Fourteenth street is a business street?

A. Yes, sir; but we have a private residence there.

Q. That is the basis of your estimate?

A. No, sir; I do not estimate it upon that, but from my general knowledge of what real estate has been selling for around there.

Q. You are not engaged in the real-estate business, are you?

A. No, sir; not regularly.

Q. You do not profess to be an expert?

A. I have been called in once or twice as an expert by
194 parties.

Redirect examination.

By Mr. DUHAMEL:

Q. Now, suppose you owned that lot on which the house is built with the present house on it, what would you consider fair value?

Mr. WILLIAMSON: I object to that.

(Question not answered.)

Q. As a dwelling-house what would you value that part of the lot on which the house stands, together with the house, worth without regard to the adjoining lot?

WITNESS: The house and lot together?

Mr. DUHAMEL: Yes; but not the adjoining lot.

A. I should put the lot at $2.50 and the house about $8,000 or $10,000; I would split the difference and say $9,000.

Q. Would that have been its value in 1888?

A. I think it would have been; the house is a very well built house.

Recross-examination.

By Mr. WILLIAMSON:

Q. Then your first testimony is not correct. You have testified here already that you would consider $2.50 a fair price for the whole property, including the house?

A. I did not say that; I said $2.50 for the ground regardless of the house all the way through.

Q. Do you mean to say that you would value that property at $2.50 a foot and add to that a thousand dollars for the value of the house in ordinary sale of that kind of property?

A. I would.

195 Q. The ground at $2.50 a foot and the house at $8,000?

A. Yes, sir; $8,000 or $9,000.

Q. Then any testimony that you have given contrary to that you do not mean it in that sense?

A. I do not know that I have given any testimony contrary to that.

(Signed) GILBERT B. TOWLES.

Subscribed to and sworn to before me this 23rd day of May, 1890.

EDWIN FORREST,
Examiner in Chancery.

Mr. DUHAMEL: I will now recall Mr. Duvall.

WILLIAM C. DUVALL, a witness produced on behalf of the complainant, was recalled and further testified as follows:

Direct examination.

By Mr. DUHAMEL:

Q. What would you consider that land worth a foot in August, 1888?

A. Irrespective of the house, I think a fair value of the ground in 1888 was about $2.00 a foot; the house itself, while I do not recall it specially, including the ground with it, I should not think was worth more than $8,000 or $10,000; $10,000 at that time, I mean, including only the ground properly belonging to house and not including the vacant ground; the land with the house stands $10,000 and $2.00 a foot for the vacant ground—that is, in 1888.

Q. At that rate you assume that the land—vacant land—to have been worth $2.00 a foot, and that would be $4,600 for
196 the land, and you allow for the house $10,000; is that what you mean?

A. Yes, sir.

Q. How did you arrive at the value of the house as $10,000?

A. I started by saying that I was not very familiar with the house; I recall it in a general way to my mind, and I can say that was about a fair value for it at that time.

Q. In valuing the property, which is improved by a substantial house, would you add the value of the land, as vacant land, to the value of the house to get at the value of the whole land and house?

A. Where a substantial improvement is placed on a piece of ground I usually value it as a whole; I think it becomes a unit then; but this, of course, faces us with a permanent improvement there and vacant land besides, and the way your question was asked me I thought I ought not to go into it further.

(Signed) W. CLARENCE DUVALL.

Sworn and subscribed to before me this 24th of May, 1890.

EDWIN FORREST,
Examiner in Chancery.

The further taking of testimony was adjourned till notice.

WEDNESDAY, *March 5th*, 1890—3 o'clock p. m.

Met pursuant to notice.

Present: Mr. Duhamel, solicitor for the complainant; Mr. Williamson, of counsel for the defendant-, and the examiner.

197 Whereupon W. C. DUVALL, a witness produced on behalf of the complainant, was recalled and further testified as follows:

Direct examination.

By Mr. DUHAMEL:

Q. In view of your direct testimony given at the last session in this case, what, if any, explanations or corrections have you to make in regard to it?

A. At the time of my former testimony I stated that in a general way I was acquainted with Mr. Tallmadge's house on R street between Thirteenth and Fourteenth streets northwest, in which he resides. At that time I thought, just as I stated, that I did know the house in which he lived. I had an impression in my mind that it was one of a row of several similar houses on the north side of R street very near 13th street. I valued that house, which I had in my mind as Mr. Tallmadge's house, at $10,000. You may recall that I decided on the amount of $10,000, after inquiring about the frontage of the house, and you may possibly recall that I was surprised when I was told that it was 23 feet front, and that prior you may recall of my placing the value at $10,000 that I had first mentioned a slightly smaller sum, because the house, which I presumed was Mr. Tallmadge's, to my mind was not more than from 18 to 20 feet at the most wide. Later on the afternoon of the same day that I gave my testimony I was called out on business to No. 1810 Thirteenth street northwest, which is between, I believe, S and T. After I had finished my business there and was about returning home, being in my buggy, I recalled that I was near Mr.

198 Tallmadge's house and further recalled, having heard Mr. Towles' testimony that we differed considerably in regard to the value of this particular house, I thought I would pass by for my own satisfaction and verification of my value, at least, to my own mind, and more particularly note No. 1313 R street. I did pass that house, and to my surprise saw that the house that I had in my mind was not 1313, but that 1313 R street was larger, and it was at once manifest to my mind that the house was of much greater value than the value that I had placed on it in my former testimony. Seeing at once that there was some error somewhere in my mind, I stopped my buggy and rang the door bell. I intended to inquire to find out positively whether that was Mr. Tallmadge's house. Mr. Tallmadge met me at the door; opened the door for me.

Q. Did you go into the house?

A. I went into the house and examined it particularly, inside and outside. The house is a two-story and basement and with a mansard roof. The dwelling is 23 feet front; the lot, I believe, is 100 feet deep. The front of the house is of press brick of unusually fine character and elegantly laid, if I recollect it correctly; the trimmings are brownstone; the house has a bay window, fine brownstone steps, and an iron railing; the vestibule is large and is laid in marble or tiled, I believe, with——

Mr. WILLIAMSON: We don't care anything about all this description.

WITNESS: It represents the value of the house, and I want to put all of this in, if I can, to show the reason why the value of
199 this house is more than the house that I had in view when I formerly testified. The downstairs part of it is hard-wood finish of walnut; the ceilings are unusually high; the mantels were of a fine character downstairs, and the whole interior finished well and in the very best of order and in an unusual state—only such a state as exists in an unusually fine house. Instead of this house and the ground on which it stands, 23 feet x 100 deep, being worth $10,000, a value which related to another house that I have heretofore referred to and not as to this particular house, No. 1313 R street, I consider that this house and the grounds is worth $14,600 fully, figuring the ground at $2.00 and the house at $10,000; and, furthermore, this house has a side wall, that can be used for building purposes, of a value of several hundred dollars, and altogether the place is much handsomer and finer than I had understood or had in my mind as the dwelling.

Q. In estimating you don't include the side lot?

A. I do not. I have no change to make in my idea of the value of the ground there. In August, 1888, the ground was worth $2.00.

Q. These estimates that you have been talking about have relation to August, 1888, as much as now?

A. Yes, sir.

Q. Was that house worth more then than it is now?

A. I think the house is fully worth that now. I think the figures that I have stated — with the character of the house, and if it was in the condition then that it was when I saw it the other day it was worth that figure in 1888. I never examined the house before.

200 Cross-examination.

By Mr. WILLIAMSON:

Q. What do you value the land at on which the house stands? How much per foot?

A. I have valued it at $2.00 a foot, although I am of the opinion now that I was when I gave my former testimony—that after an improvement has been placed on a piece of ground—substantial improvement—that it should be treated as a whole.

Q. I am asking about the ground now. If you will just answer that we will get on better. You valued the ground at $2.00 a foot?

A. Yes, sir.

Q. What did you value the house at?

A. $10,000.

Q. You are not a practical builder?

A. No, sir.

Q. You are not an architect?

A. No, sir.

Q. And you didn't see this house in 1888? You just examined it the other day?

A. I never particularly examined this house until the other day.
Q. Did you examine it at all until the other day?
A. Since our last sitting here.
Q. Did you ever examine it at any time prior to the testimony given the other day?
A. No, sir.
Q. You don't know what it cost to put it up?
A. I did not build it.
201 Q. Do you not know, as a matter of fact, what it cost to put it up?
A. I don't know whether it cost one dollar or twenty thousand dollars.
Q. You don't know how much it cost?
A. I might be able to give you a right good guess.
Q. I am asking about your own knowledge now. When you went up to examine it the other day you were very much impressed by the house?
A. I was very much impressed by my mistake; especially the effect that the mistake would have on the value as represented in my testimony.
Q. While you were up there you had a talk with Mr. Tallmadge and Mrs. Tallmadge?
A. I did not have the pleasure of meeting Mrs. Tallmadge.
Q. You saw Mr. Tallmadge?
A. Yes, sir.
Q. And talked with him?
A. Yes, sir.
Q. You told him that you had made some big mistake?
A. Yes, sir.
Q. Did he tell you what he thought the house was worth after you went there?
A. No, sir; I don't recollect that he helped me any in regard to it. I was not seeking any help, but I went to right a wrong.
Q. Right something wrong that you had done?
A. Yes, sir.
Q. You don't think that you have gone too far the other
202 way, like a pendulum?
A. No, sir; I do not.
Q. You don't think that you ought to reduce that estimate?
A. I do not think so. The greater value was manifest to me immediately upon my seeing the house. I think it would be manifest to any one who is acquainted or should be acquainted with the value of houses in that vicinity.
Q. And you have added on that account $4,600?
A. Yes, sir.

(Signed) W. CLARENCE DUVALL.

Subscribed and sworn to before me this 24th day of May, 1890.

(Signed) EDWIN FORREST,
Examiner in Chancery.

The solicitor for the complainant here announced that he had no further testimony to offer on her behalf and requested the examiner to note the fact of record, which was accordingly done.

I, Edwin Forrest, an examiner in chancery, do hereby certify that the foregoing depositions were duly taken down by me in shorthand from the statements of the witnesses at the time and place mentioned in the caption hereof and were afterwards by me transcribed and caused to be reduced into typewriting and by said witnesses read over and subscribed to—

The said witnesses having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touch-
203 ing the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

(Signed) EDWIN FOREST,
Examiner in Chancery.

CHICAGO, *Sept.* 8, 1882.

Preston, Kean & Co., bankers,

Pay to the order of J. L. Miller five thousand dollars.
$5,000.

(Signed) L. C. TALLMADGE.

TALLMADGE *vs.* KIRBY *et al.* } In Eq. 11382.

Complainant's Exhibit L. C. T. No. 1, filed by complainant with examiner.

(Signed) EDWIN FORREST, *Examiner.*

Endorsed on back: J. L. Miller, Miller & Jones.

204 M. E. T. No. 2.

TALLMADGE *vs.* KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 2 filed with the examiner by complainant.

E. FORREST, *Examiner.*

This indenture, made this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and eighty-three, by and between John L. Miller and Lola Miller, his wife, both of the city of Washington and District of Columbia, parties of the first part, and Maria E. Tallmadge, of Washington, District of Columbia, party of the second part,

Witnesseth, That the said parties of the first part, for and in consideration of the sum of eleven thousand and nine hundred dollars ($11,900) in lawful money of the United States to them in hand paid by the said party of the second part, at and before the sealing and

delivery of these presents, the receipt whereof is herey acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said party of the second part, her heirs and assigns forever, the following-described real estate situate in the city of Washington, District of Columbia, to wit: All those certain pieces or parcels of land and premises known and distinguished as being lots numbered seventy-six (76) and seventy-seven (77), and seventy-eight (78), according to W. H. Clagett's subdivision of lots numbered one (1) and twenty-four (24) of W. W. Corcoran's subdivision of square numbered two hundred
205 and thirty-nine (239) as recorded in the books of the surveyor of the said District, fronting fifty-seven (57) feet on "R" street north and running back the depth of said lots one hundred feet.

Together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to or out of the said pieces or parcels of ground and premises.

To have and to hold the said pieces or parcels of ground and premises and appurtenances unto the said party of the second part, her heirs and assigns, to her sole use, benefit and behoof forever.

And the said parties of the first part for themselves and for their heirs, executors and administrators do hereby covenant, promise and agree to and with the said party of the second part, her heirs and assigns, that they, the said parties of the first part, and their heirs, shall and will warrant and forever defend the said pieces or parcels of ground and premises and appurtenances unto the said party of the second part, her heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof, by, from, under or through any cause or claim whatsoever.

And further, that they, the said parties of the first part, and their heirs, shall and will, at any and at all times hereafter, upon the request and at the cost of the said party of the second part, her
206 heirs or assigns, make and execute all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said pieces or parcels of ground and premises and appurtenances, unto the said party of the second part, her heirs or assigns, as the said party of the second part, her heirs or assigns, or her counsel learned in the law shall advise, devise or require.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

(Signed) JOHN L. MILLER. [SEAL.]
" LOLA MILLER. [SEAL.]

Signed, sealed and delivered in the presence of—
W. C. DUVALL.

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, W. C. Duvall, a notary public in and for the district and county aforesaid, do hereby certify that John L. Miller and Lola Miller, his wife, parties to a certain deed bearing date on the 27th day of December, A. D. 1883, and hereto annexed, personally appeared before me, in the District aforesaid, the said John L. Miller and Lola Miller being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed, and the said Lola Miller being by me examined privily and apart from her husband, and having the deed aforesaid fully ex-
207 plained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this 27th day of December, A. D. 1883.

[SEAL.] (Signed) W. C. DUVALL,
Notary Public, D. C.

[Endorsed:] Deed. J. L. Miller *et ux.* to Maria E. Tallmadge. Office of recorder of deeds, District of Columbia. Received for record on the 4th day of Oct., A. D. 1888, at 9.45 o'clock a. m., and recorded in Liber No. 1342, folio 112 *et seq.*, one of the land records for the District of Columbia, and examined by Jas. M. Trotter, recorder.

208 U. S. PATENT OFFICE,
WASHINGTON, D. C., *March* 14, 1884.

Received of John L. Miller, per H. H. Tallmadge, one hundred and twenty dollars ($120) in payment of semi-annual interest due on notes March 12, 1884.

(Signed) HENRY H. BATES.

TALLMADGE
vs.
KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 3 filed with the examiner by the complainant.

E. FORREST, *Examiner.*

WASHINGTON, D. C., *September* 15, 1884.

Received of John L. Miller one hundred and twenty dollars ($120), being amount of interest due the 12th instant on four notes of said John L. Miller to undersigned.

(Signed) HENRY H. BATES.

TALLMADGE
vs.
KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 4 filed with the examiner by the complainant.

E. FORREST, *Examiner.*

209 U. S. PATENT OFFICE,
(8770–1000.) WASHINGTON, D. C., *March* 12, 1885.

Received of John L. Miller, Esq., one hundred and twenty dollars ($120), interest due this day on four notes of one thousand dollars ($1,000) each to me from said John L. Miller.

HENRY H. BATES.

TALLMADGE
vs.
KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 5 filed with the examiner by the complainant.

E. FORREST, *Examiner.*

U. S. PATENT OFFICE,
(8770–1000.) WASHINGTON, D. C., *Sept.* 12, 1885.

Received of John L. Miller one hundred and twenty dollars ($120) for interest this day due on four notes of one thousand dollars each, bearing semi-annual interest.

(Signed) HENRY H. BATES.

TALLMADGE
vs.
KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 6 filed with the examiner by the complainant.

E. FORREST, *Examiner.*

210 U. S. PATENT OFFICE,
(8770–1000.) WASHINGTON, D. C., *March* 12, 1886.

Received of John L. Miller, per H. H. Tallmadge, Esq., one hundred and twenty dollars ($120), interest due this day.

(Signed) HENRY H. BATES.

TALLMADGE
vs.
KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 7 filed with the examiner by the complainant.

E. FORREST, *Examiner.*

U. S. PATENT OFFICE,
(8770–1000.) WASHINGTON, D. C., *Sept.* 13, 1886.

Received of John L. Miller, per H. H. Tallmadge, Esq., one hundred and twenty dollars ($120), interest due Sept. 12, 1886, on notes.

(Signed) HENRY H. BATES.

TALLMADGE
vs.
KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 8 filed with the examiner by the complainant.

E. FORREST, *Examiner.*

211. U. S. PATENT OFFICE,
(8770–1000.) WASHINGTON, D. C., *March* 14, 1887.

Received of John L. Miller, per H. H. Tallmadge, Esq., one hundred and twenty dollars ($120) for semi-annual interest due March 12th on loan notes for $4,000.

(Signed) HENRY H. BATES.

TALLMADGE
vs.
KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 9 filed with the examiner by the complainant.

E. FORREST, *Examiner.*

U. S. PATENT OFFICE,
(8770–1000.) WASHINGTON, D. C., *Sept.* 8, 1887.

Received of John L. Miller, per H. H. Tallmadge, Esq., one hundred and twenty dollars ($120) in payment of interest due Sept. 12, inst., on $4,000 loan (per draft No. 5447, U. S. Bank of Hartford, Conn., on Chemical National Bank of N. Y.).

(Signed) HENRY H. BATES.

TALLMADGE
vs.
KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 10 filed with the examiner by the complainant.

E. FORREST, *Examiner.*

212 U. S. PATENT OFFICE,
(8770–1000.) WASHINGTON, D. C., *March* 15, 1888.

Received of heirs of John L. Miller, deceased, per H. H. Tallmadge, Esq., one hundred and twenty dollars ($120) in payment of semi-annual interest due March 12th, 1888, on loan of $4,000.

(Signed) HENRY H. BATES.

TALLMADGE
vs.
KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 11 filed with the examiner by the complainant.

E. FORREST, *Examiner.*

U. S. PATENT OFFICE,
(8770–1000.) WASHINGTON, D. C., *Sept.* 17, 1888.

Received of H. H. Tallmadge one hundred and twenty dollars ($120) for interest due Sept. 12th, 1888, on four notes of $1,000 each, received on premises No. 1313 R street N. W.

(Signed) HENRY H. BATES.

TALLMADGE
vs.
KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 12 filed with the examiner by the complainant.

E. FORREST, *Examiner.*

213 U. S. PATENT OFFICE,
(8770–1000.) WASHINGTON, D. C., *March* 12, 1889.

Received of Henry H. Tallmadge, Esq., one hundred and twenty dollars ($120) (check) in payment of interest due this day on four notes of $1,000 each, drawn by J. L. Miller, secured by deed of trust.

(Signed) HENRY H. BATES.

TALLMADGE
vs.
KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 13 filed with the examiner by the complainant.

E. FORREST, *Examiner.*

WASHINGTON, D. C., *Sept.* 13, 1883.

John L. Miller, Esq.

DEAR SIR: I am today in receipt of check No. 589 of Clarence Cary on Mercantile National bank, N. Y., through H. H. Tallmadge, Esq., for $1,150, in payment of your note for $1,000 due Sept. 12 inst., and also $150 interest due same date on notes for $5,000.

The interest payments are duly endorsed and I transmit herewith the cancelled note as per request.

Truly yours, H. H. BATES.

Addressed: Care H. H. Tallmadge, Esq., St. Denis hotel, New York, N. Y.

TALLMADGE
vs.
KIRBY *et al.* } In Eq. No. 11382.

Complainant's Exhibit M. E. T. No. 14 filed with the examiner.

E. FORREST, *Examiner.*

214 (Secured by deed of trust.)

$1,000.00. WASHINGTON, D. C., *Sept. 12th*, 1882.

One year after date I promise to pay to the order of Henry H. Bates the sum of one thousand dollars for value received, with interest thereon until paid at the rate of six per cent. per annum, said interest to be due and payable semi-annually from and after the date hereof.

No. 1. [JOHN L. MILLER.]*

Paid and cancelled Sept. 12th, 1883.

H. H. BATES.

215 TALLMADGE *vs.* KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 15 filed with the examiner by complainant.

E. FORREST, *Examiner.*

TALLMADGE *vs.* KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 16 filed with the examiner by the commissioner.

E. FORREST, *Examiner.*

This indenture, made this twelfth (12) day of September, in the year of our Lord one thousand eight hundred and eighty-two, by and between Henry H. Bates and Lavinia Bates, his wife, of Washington, D. C., parties of the first part, and John L. Miller, of the same city and District, party of the second part:

Witnesseth, that the said parties of the first part, for and in consideration of the sum of ten thousand dollars, in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents, grant, bargain, sell, alien, enfeoff, release, and convey unto the said party of the second part, his heirs and assigns, forever, the following-described real estate situate in the city of Washington, District of Columbia, to wit:

All those certain pieces or parcels of land and premises, known and distinguished as and being lots numbered seventy-seven (77) and seventy-eight (78), according to William H. Clagett's subdivision of lots numbered one (1) and twenty-four (24) of W. W. Corcoran's subdivision of square numbered two hundred and thirty-nine
216 (239), the same being duly recorded in the books of the surveyor of the said District, fronting thirty-eight (38) feet on R

* Words in brackets erased in copy.

street north and running back the depth of the said lots one hundred (100) feet.

Together with all the improvements, ways, easements, rights, privileges, appurtenances and hereditaments to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever, either at law or in equity, of the said parties of the first part, of, in, to, or out of the said pieces or parcels of land and premises.

To have and to hold the said pieces or parcels of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their sole use, benefit and behoof forever.

And the said parties of the first part for themselves, and for their heirs, executors and administrators, do hereby covenant, promise and agree to and with the said party of the second part, his heirs and assigns that they, the said parties of the first part and their heirs shall and will warrant and forever defend the said pieces or parcels of land and premises and appurtenances unto the said party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof, by, from, under or through them, or any of them, or any other person or persons whomsoever.

And further, that they, the said parties of the first part and their heirs shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part, his
217 heirs or assigns, make, execute, deliver and acknowledge all such other deed or deeds or other assurances in law for the more certain and effectual conveyance of the said pieces or parcels of land and premises and appurtenances, unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns or their counsel learned in the law shall advise, devise, or require.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

(Signed) HENRY H. BATES. [SEAL.]
" LAVINIA BATES. [SEAL.]

Signed, sealed, and delivered in the presence of—
C. S. DRURY.

DISTRICT OF COLUMBIA, *ss:*

I, Charles S. Drury, a notary public in and for the District aforesaid, do hereby certify that Henry H. Bates and Lavinia Bates, his wife, parties to a certain deed bearing date on the twelfth day of September, A. D. 1882, and hereunto annexed, personally appeared before me in the District aforesaid, the said Henry H. Bates and Lavinia Bates being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed, and the said Lavinia Bates, being of full age and by me

examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to
218 be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this 12th day of September, A. D. 1882.

[SEAL.] (Signed) CHARLES S. DRURY,
Notary Public.

[Endorsed:] Deed from Henry H. Bates *et ux.* to John L. Miller. Received for record on the 12th day of September, A. D. 1882, at 12.10 o'clock p. m., and recorded in Liber No. 1015, folio 418 *et seq.*, one of the land records of the District of Columbia, and examined by Fred'k Douglass, recorder. Printed and sold by J. S. Tomlinson, No. 632 F street N. W.

219 TALLMADGE *vs.* KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 17 filed with the examiner by the complainant.

E. FORREST, *Examiner.*

This indenture, made this twenty-ninth (29) day of June, in the year of our Lord one thousand eight hundred and eighty-three, between William H. Clagett and Adele Clagett, his wife, of the city of Washington, in the District of Columbia, of the first part, and John L. Miller of the said city and District, of the second part,

Witnesseth, that the said parties of the first part, for and in consideration of the sum of nineteen hundred dollars ($1,900) in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and aliened, enfeoffed, released and conveyed, and do by these presents, grant, bargain, sell, alien, enfeoff, release and convey unto the said party of the second part, his heirs and assigns forever, all that certain piece or parcel of ground lying and situate in the city of Washington, in the District of Columbia, known and described as sublot numbered seventy-six (76) in William H. Clagett's subdivision of lots numbered one (1) and twenty-four (24) of W. W. Corcoran's subdivision of square numbered two hundred and thirty-nine (239) and recorded in Book R. L. Hoxie, folio 64, October 15, 1875, one of the land records of said city and District.

220 Together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues and profits thereof: and all the estate, right, title, interest, claim and demand whatsoever whether at law or in equity, of the said party of the first part, of, in, to or out of the said piece or parcel of land and premises.

To have and to hold the said piece or parcel of land and premises with the appurtenances unto the said party of the second part, his heirs and assigns, to his and their sole use, benefit and behoof forever.

And the said William H. Clagett, for himself and his heirs, executors and administrators, doth hereby covenant, promise and agree to and with the said party of the second part, his heirs and assigns, that he, the said William H. Clagett, for himself and his heirs, shall and will warrant and forever defend the said piece or parcel of land and premises with the appurtenances, unto the said party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under or through him, them or any of them.

And further, that the said William H. Clagett, for himself and his heirs, shall and will at any and at all times hereafter upon the request and at the cost of the said party of the second part, his heirs or assigns, make and execute all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances unto the said party of the second part, his heirs or assigns, as
221 the said party of the second part, his heirs or assigns, or their counsel learned in the law shall advise, devise or require.

In testimony whereof, the said parties of the first part have hereunto set their hand and seal on the day and year first hereinbefore written.

(Signed) WILLIAM H. CLAGETT. [L. S.]
" ADELE CLAGETT. [L. S.]

Signed, sealed, and delivered in the presence of—having been first duly stamped—
DORSEY CLAGETT.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, Dorsey Clagett, a notary public in and for the District of Columbia aforesaid, do hereby certify that William H. Clagett and Adele Clagett, his wife, parties to a certain deed bearing date on the 29th day of June, A. D. 1883, and hereto annexed, personally appeared before me, in the county aforesaid, the said William H. Clagett and Adele Clagett being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed, and the said Adele Clagett, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this 29th day of June, A. D. 1883.

[SEAL.] (Signed) DORSEY CLAGETT,
Notary Public.

[Endorsed:] Deed in fee-simple. William H. Clagett and wife to John L. Miller. Received for record and recorded on the 30th day of November, A. D. 1883, at 10.40 a. m., in Liber No. 1063, folio 197 *et seq.*, one of the land records for the District of Columbia, and examined by Fred'k Douglass, register.

222 TALLMADGE *vs.* KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 18 filed with the examiner by the complainant.

E. FORREST, *Examiner.*

This indenture, made the 26th day of September, in the year of our Lord one thousand eight hundred and eighty-four, by and between Howard C. Clagett and John W. Boteler, of the city of Washington, in the District of Columbia, trustees of the first part, and John L. Miller of the said city and District, party of the second part: witnesseth, that—

Whereas the said John L. Miller and Lola, his wife, heretofore made and executed a certain deed of trust bearing date on the 29th day of June, in the year of our Lord, eighteen hundred and eighty-three, and duly recorded in Liber No. 1048, folio 161 *et seq.*, one of the land records for the county of Washington, D. C., on the 30th day of June, A. D. 1883, and thereby conveyed in trust, to the said parties of the first part, and to the survivor of them, his heirs and assigns, to secure an indebtedness to W. H. Clagett, which indebtedness is fully set forth in said deed of trust, all that certain piece or parcel of ground lying and situate in the city of Washington, in the District of Columbia, known and described as sublot numbered seventy-six (76) in W. H. Clagett's subdivision of lots numbered one (1) and twenty-four (24) in W. W. Corcoran's subdivision
223 of square numbered two hundred and thirty-nine (239) and recorded in Book R. L. Hoxie, folio 64, one of the land records of said city and District, and being the same ground conveyed by said Clagett to said John L. Miller by deed in fee of even date with said deed of trust hereby released.

And whereas, the said indebtedness with interest and costs, has been fully paid and satisfied by the party hereto of the second part, as is evidenced by the presentation of notes duly canceled, and the purposes for which said trust was created, have therefore ceased and determined the said party of the second part is thereby entitled to a reconveyance of said described premises, and to have the same released and discharged of and from all lien, claim, demand, or encumbrance, by reason of said deed of trust or anything therein contained, as fully as if said deed of trust had not been made.

Now therefore, this indenture witnesseth, that the said parties of the first part, trustees as aforesaid, for and in consideration of the premises aforesaid, and further, the sum of one dollar, lawful money of the United States, to them now in hand paid by the said party of

the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and conveyed, and do by these presents, grant, bargain, sell, release, and convey unto the said party of the second part, his heirs and assigns forever, all the hereinbefore-described premises, and all the rights, privileges, and appurte-
224 nances to the same belonging or in anywise appertaining.

To have and to hold the same, unto and to the use of the said party of the second part, his heirs and assigns forever, as in his first and former estate, free, released, and discharged of and from all lien, claim or incumbrance by reason of said deed of trust.

In testimony whereof, the said parties of the first part as trustees as aforesaid, have hereunto set their hands and seals on the day and year first hereinbefore written.

(Signed) HOWARD C. CLAGETT, *Trustee.* [SEAL.]
" JOHN W. BOTELER, *Trustee.* [SEAL.]

Signed, sealed, and delivered in the presence of—the words "survivor of them," in 17th line, 1st page, and the words "and the presentation of notes duly canceled," in fourth line of 2nd page, were interlined prior to the execution of this instrument—

(Signed) DORSEY CLAGETT.

DISTRICT OF COLUMBIA, }
Washington County, } *ss:*

I, Dorsey Clagett, notary public in and for the District and county aforesaid, do hereby certify that Howard C. Clagett and John W. Boteler, trustees, parties to a certain deed bearing date on the twenty-sixth day of September, A. D. 1884, and hereto annexed, personally appeared before me in said county, and the said Howard C. Clagett and John W. Boteler being personally well known to me to be the persons who executed said deed, and acknowledged the same to be their act and deed.

Given under my hand and notarial seal this twenty-sixth day of September, A. D. 1884.

(Signed) DORSEY CLAGETT,
[SEAL.] *Notary Public.*

(Endorsed:) Release from Howard C. Clagett and John W. Boteler to John L. Miller. Received for record on the 13th day of October, A. D. 1884, at 10 o'clock a. m., and recorded in Liber No. 1096, folio 248 *et seq.*, one of the land records of the District of Columbia, and examined by Fred'k Douglass, recorder. Published & sold by A. McCreary, No. 1142 7th St. N. W. Printed & sold by J. S. Tomlinson, No. 419 Eleventh St. N. W.

225 TALLMADGE *vs.* KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 19 filed with the examiner by the complainant.

E. FORREST, *Examiner.*

I have fully examined the title to lots 77 and 78, in square 239, according to Clagett's subdivision (as in R. L. Hoxie, page 64), and find the same good in Henry H. Bates and free of all encumbrance except trust to B. H. Warner and Jas. L. Barbour, May 16, 1887—

To secure W. H. Clagett, $800, 1 year, 8%, — 857, fol. 43, on lot 78 and west 6 ft. of lot 77.

Trust to Dorsey Clagett, May 25, 1877, Liber, 855, 133—

Secure Wm. H. Clagett, $775, 1 year, 8%, on east $12\frac{6}{12}$ ft. of lot 77.

Fee $20.

(Signed) M. ASHFORD.

June 20, 1877.

I have continued the above to this date and report that the above deed of trust to Warner and Barbour on 18 February, 1878, was released. Liber 876, f. 428.

The deed of trust to D. Clagett was also released on 4 May, 1878. Liber 888, f. 178.

I find no changes of record and no judgments or liens. Collector's certificates should be obtained for taxes.

(Signed) WM. R. WOODWARD.

11 September, 1882.

226 WASHINGTON, D. C., *Oct. 3rd*, 1888.

Mr. Henry H. Tallmadge.

DEAR SIR: This is to notify you that I have bought the property No. 1313 R street N. W., and I understand that you are the tenant of said property. I will expect you to pay me the rent from the first of this month, October, 1888. The rent will be $83.33\frac{1}{3}$ per month.

Yours truly,

(Signed) W. W. KIRBY, *City Hall.*

TALLMADGE *vs.* KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 20 filed with the examiner.

E. FORREST, *Examiner.*

If not called for in ten days return to—
U. S. marshal's office.
Washington, D. C.
Mr. HENRY H. TALLMADGE,
No. 1313 *R St. N. W., City.*

TALLMADGE
vs.
KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 20.
E. FORREST, *Examiner.*

227 H. C. Clagett & J. W. Boetler, trustees.

$633. WASHINGTON, D. C., *June 29th*, 1883.

Six months after date I promise to pay to the order of W. H. Clagett six hundred and thirty-three dollars, with interest at six per cent. per annum, value received.

*[JOHN L. MILLER.]

[Written across the face:] Paid.

TALLMADGE
vs.
KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 21.
E. FORREST, *Examiner.*

Endorsed by W. H. Clagett.

Secured by deed of trust.
H. C. Clagett & J. W. Boteler, trustees.

$633. WASHINGTON, D. C., *June* 29, 1883.

Twelve months after date I promise to pay to the order of W. H. Clagett six hundred and thirty-three dollars, with interest at six per cent. per annum, value received. (Paid.)

JOHN L. MILLER.

[Written across the face:] Paid.

TALLMADGE
vs.
KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 22.
E. FORREST, *Examiner.*

Endorsed by W. H. Clagett.

228 This indenture, made this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and eighty-three, between John L. Miller and Lola Miller, his wife, of the city

* Words in brackets erased in copy.

of Washington, in the District of Columbia, parties of the first part, and Howard C. Clagett and John W. Boteler, "trustees" of the said city and District of the second part.

Whereas, said John L. Miller being indebted to W. H. Clagett of said city and District in the sum of twelve hundred and sixty-six—1,266—dollars being the deferred payment in the purchase of a piece of ground hereinafter described, hath made, signed and delivered to said W. H. Clagett, his two certain promissory notes each for the sum of six hundred and thirty-three—633—dollars, bearing even date with these presents, and payable to the order of said W. H. Clagett in six and twelve months after date respectively, with interest at six per cent. per annum.

And whereas, the said parties of the first part are desirous to secure the full and punctual payment of said notes, and all interest, costs, and expenses that may accrue thereon, according to the true intent and meaning of the aforesaid promissory note:

Now therefore this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises aforesaid, and further the sum of one dollar, in lawful money of the United States, to them in hand paid by the said parties of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and conveyed, and do by these presents,
229 grant, bargain, sell, alien, enfeoff, release, and convey unto the said parties of the second part, and the survivor of them, his heirs and assigns, all that certain piece or parcel of ground lying and situate in the city of Washington, in the District of Columbia, known and described as sublot numbered seventy-six—76—in W. H. Clagett's subdivision of lots numbered one—1—and twenty-four—24—in W. W. Corcoran's subdivision of square numbered two hundred and thirty-nine—239—and recorded in Book R. L. Hoxie, folio 64, one of the land records of said city and District being the same ground conveyed by said Clagett to said John L. Miller by deed in fee of even date with these presents.

Together with all the improvements, ways, easements, rights, privileges, and appurtenances, to the same belonging or in any way appertaining, and all the estate, right, title, interest and claim, either at law or in equity or otherwise however, of the said parties of the first part, of, in, to or out of the said described real estate and premises.

To have and to hold the said described real estate, and premises and appurtenances, unto and to the use of the said parties of the second part and to the survivor of them, his heirs and assigns, in and upon the trust nevertheless hereinafter mentioned and declared, that is, in trust to permit the said John L. Miller, his heirs or assigns, to use and occupy the said described premises, and the rents, issues, and profits thereof, to take, have and apply to and for his and their sole use and benefit, until default be made in the payment of said prin-
cipal notes or any installment of interest thereon, or any
230 proper cost, charge, commission or half commission or expense in and about the same.

And upon the full and punctual payment of all of said principal notes, and the interest thereon, and all other proper costs, charges, commissions, half commissions, and expenses, at any time before the sale hereinafter provided for, to release and to reconvey the said described premises unto the said John L. Miller, his heirs or assigns at their cost.

And upon this further trust, that upon default being made in the payment of any or either of the said principal notes, or any installment of interest thereon, or any proper cost, charge, commission, or half commission or expense in and about the same, then, and at any time thereafter, to sell the said described real estate and premises, at public auction upon such terms and conditions, and at such time and place, and after such previous public advertisement as the said parties of the second part, their heirs or the trustee, acting in the execution of this trust, shall deem advantageous and proper, and to convey the same in fee-simple to, and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and of the proceeds of said sale or sales, first to pay all proper costs, charges and expenses, and to retain as compensation a commission of five per cent. on the amount of the sale or sales; secondly, to pay whatever may then remain unpaid of the said principal notes and the interest thereon, whether the same shall be due or not, and lastly to pay the remainder, if any, to said John L. Miller, his executors, administrators, or assigns.

And the said John L. Miller doth hereby agree at his own
231 cost, during all the time, wherein any part of the matter hereby secured shall be unpaid or unsettled, to pay all taxes and assessments on said premises when due, and to keep the said improvements insured against fire, in the name and to the satisfaction of said parties of the second part, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and that upon any default or neglect to so pay the said taxes and assessments, or to so insure, any party secured hereby may have said improvements insured and the expense thereof shall be a charge hereby secured, and bear like interest as the matter hereby secured.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

(Signed) JOHN L. MILLER. [SEAL.]
" LOLA MILLER. [SEAL.]

Signed, sealed, and delivered in the presence of—
DORSEY CLAGETT.

DISTRICT OF COLUMBIA, } *scilicet:*
County of Washington, }

I, Dorsey Clagett, a notary public in and for the said county, in said District, do hereby certify that John L. Miller and Lola Miller, his wife, parties to a certain deed bearing date on the 29th day of June,

A. D. 1883, and hereto annexed, personally appeared before me in the said city and District, the said John L. Miller and Lola Miller, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same
232 to be their act and deed; and the said Lola Miller, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and my notarial seal this 29th day of June, A. D. 1883.

(Signed) DORSEY CLAGETT, [SEAL.]
Notary Public.

TALLMADGE *vs.* KIRBY *et al.* } In Equity. No. 11382.

Complainant's Exhibit M. E. T. No. 23 filed with the examiner by the complainant.

EDWIN FORREST, *Examiner.*

[Endorsed:] Deed of trust. John L. Miller and wife to H. C. Clagett and J. W. Boetler, trustees. Received for record on the 30th day of June, A. D. 1883, at 10.40 o'clock a. m., and recorded in Liber No. 1048, folio 161 *et seq.*, one of the land records for the District of Columbia, and examined by Fred'k Douglass.

233 *Decree Declaring Deed & Deed of Trust Void. Filed Nov.* 1, 1890.

In the Supreme Court of the District of Columbia.

MARIA E. TALLMADGE *vs.* WILLIAM W. KIRBY *et als.* } No. 11382, Eq. Doc. —.

This cause coming on for hearing on the pleadings and testimony and being argued by counsel and considered by the court, it is thereupon, this 1st day of November, 1890, adjudged, ordered, and decreed that the deed of the defendants Miller, Houchens, and Goudy to the defendant Kirby and the deed of trust made by the defendant Kirby and wife to the defendants Willoughby and Williamson be, and are hereby, declared null and void and set aside; and it is further adjudged, ordered, and decreed that the defendant Kirby be, and is, perpetually enjoined from interfering with the complainant's lots and premises 76, 77, and 78, square 239, and the defendants Willoughby and Williamson be likewise enjoined from enforcing or proceeding under the deed of trust to them from the defendant Kirby; and the complainant have her costs in these proceedings against the defendant Kirby, to be taxed by the clerk.

(Signed) A. C. BRADLEY, *Justice.*

234 *Entry in Order Book* 11, *Page* 179.

TALLMADGE
vs.
KIRBY. } No. 11382.

The clerk will please note an appeal from the decree of Nov. 1st, 1890, to the general term by the defendants Houchens and myself.

W. WILLOUGHBY, *Sol.*

Appeal as ordered entered.
'90, 11, 6.

BY THE CLERK.

Entries in Order Book 11, *Page* 180.

TALLMADGE
vs.
KIRBY *et als.* } 11382.

NOVEMBER 13TH, 1890.

The clerk will please enter this cause appealed to the general term.

WM. T. BAILEY,
Of Counsel for Defendants.

Appeal as ordered entered.
'90, 11, 13.

BY THE CLERK.

235 MARIA E. TALLMADGE
vs.
WM. W. KIRBY *et al.* } 11382.

Appeal as ordered entered.
'90, 11, 14.

BY THE CLERK.

NOVEMBER 14TH, 1890.

The clerk will please enter an appeal from decree of Nov. 1, 1890, to the general term on behalf of defendants Miller, Goudy, and myself.

L. CABELL WILLIAMSON, *Solicitor.*

Decree of Ct. in Gen. Term Modifying Decree of Special Term Specifically. Filed December 22*nd,* 1891.

In the Supreme Court of the District of Columbia, Sitting in General Term, October Term, 1891.

MARIA E. TALLMADGE
vs.
WILLIAM W. KIRBY *et al.* } Equity. No. 11382.

236 On appeal from the special term sitting in equity.

This cause came on to be heard on appeal from the special term sitting in equity and was argued by counsel. On consideration

whereof it is, this 22nd day of December, 1891, ordered, adjudged, and decreed that the decree of the special term be modified by striking out that part of the said decree which reads as follows, viz: "And it is further ordered, adjudged, and decreed that the defendant Kirby be, and he is hereby, perpetually enjoined from interfering with the complainant's lots and premises 76, 77, and 78, square 237," which the court decrees unnecessary.

As to all other matters and things in the said decree of the special term the same is affirmed with costs.

And it is further ordered, adjudged, and decreed by this court that the defendant Richard H. Miller do upon the demand of the said Kirby refund to him the ($3,000.00) three thousand dollars in money paid him by the said Kirby, and that the said Miller upon like demand also deliver up to the said Kirby the three notes for $3,000.00 each, described in the answers of the said Miller
237 and Kirby, which were delivered by the said Kirby to the said Miller.

E. F. BINGHAM,
Chief Justice.

Appeal to U. S. Sup. Court by W. W. Kirby & Allowance Thereof. Filed December 29th, 1891.

Supreme Court of the District of Columbia, in General Term, December 29th, 1891.

MARIA E. TALLMADGE
vs.
WILLIAM WALLACE KIRBY, L. CABELL WILLIAMSON, Westel Willoughby, Elizabeth M. Houchens, Ella A. Goudy, and Richard H. Miller. — In Equity. No. 11382.

And now comes the defendant William Wallace Kirby, by counsel, and prays an appeal to the Supreme Court of the United States from the decree entered in this court in the above-entitled cause on
238 the 22nd day of December, 1891, which is allowed, and the appeal bond is fixed at two hundred dollars.

E. F. BINGHAM,
Chief Justice.

239 In the Supreme Court of the District of Columbia, the 29th Day of December, 1891.

MARIA E. TALLMADGE
vs.
WM. WALLACE KIRBY, L. CABELL WILLIAMSON, Westel Willoughby, Elizabeth M. Houchens, Ellen A. Goudy, and Richard H. Miller. — No. 11382. In Equity. In Error.

Know all men by these presents that we, William Wallace Kirby and Washington B. Williams, are bound unto the above-named

Maria E. Tallmadge in the sum of two hundred dollars, to be paid to the said Maria E. Tallmadge, her executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 29th day of December, 1891.

Whereas the above-named Wm. Wallace Kirby hath prosecuted his appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named William Wallace Kirby shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WM. WALLACE KIRBY. [SEAL.]
WASHINGTON B. WILLIAMS. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Approved.
By the court:
E. F. BINGHAM,
Chief Justice.

[Endorsed:] Equity. No. 11382. Maria E. Tallmadge *vs.* W. W. Kirby *et al.* Bond of Kirby on appeal to U. S. Sup. Court.

240 *Appeal by Trustees and Heirs of Miller. Filed December 30th,* 1891.

In the Supreme Court of the District of Columbia, in General Term, December 30th, 1891.

MARIA E. TALLMADGE *vs.* WILLIAM WALLACE KIRBY, L. CABELL Williamson, Westel Willoughby, Elizabeth M. Houchens, Ellen A. Goudy, and Richard H. Miller.	In Equity.	No. 11382.

And now comes the defendants L. Cabell Williamson, Westel Willoughby, Elizabeth M. Houchens, Ellen A. Goudy, and Richard H. Miller and by their respective counsel pray an appeal to the Supreme Court of the United States from the decree entered in this court in the above-entitled cause on the 22nd day of December, 1891, which is allowed and the court fix the appeal bond at the sum of two hundred dollars.

E. F. BINGHAM,
Chief Justice.

241 In the Supreme Court of the District of Columbia, the 31st Day of December, 1891.

MARIA E. TALLMADGE
vs.
WILLIAM WALLACE KIRBY, L. CABELL Williamson, Westel Willoughby, Elizabeth M. Houchens, Ellen A. Goudy, & Richard H. Miller. } No. 11382. In Equity.

Know all men by these presents that we, Richard H. Miller and William Wallace Kirby, are bound unto the above-named Maria E. Tallmadge in the sum of two hundred dollars, to be paid to the said Maria E. Tallmadge, her executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 31st day of December, 1891.

Whereas the above-named L. Cabell Williamson, Westel Willoughby, Elizabeth M. Houchens, Ellen A. Goudy, and Richard H. Miller have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named L. Cabell Williamson, Westel Willoughby, Elizabeth M. Houchens, Ellen A. Goudy, & Richard H. Miller shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

RICHARD H. MILLER. [SEAL.]
WM. WALLACE KIRBY. [SEAL.]

Sealed and delivered in presence of—
ROBERT E. DUNLOP.

Approved.
By the court:
E. F. BINGHAM, *C. J.*

[Endorsed:] Equity. No. 11382. Maria E. Tallmadge *vs.* Wm. W. Kirby *et als.* Bond of R. H. Miller with surety on appeal to U. S. Sup. Court.

242 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, John R. Young, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 29 day of January, 1892.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk.*

Justice's Certificate.

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by John R. Young, clerk of the said court, to be in due form.

Witness my hand and seal this 29 day of January, 1892.

E. F. BINGHAM,
Chief Justice. [SEAL.]

Clerk's Certificate to Justice's Official Character.

I, John R. Young, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 29th day of January, 1892.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk.*

[Endorsed:] Authentication of record.

Endorsed on cover: Case No. 14,996. District of Columbia supreme court. Term No., 377. William Wallace Kirby, appellant, *vs.* Maria E. Tallmadge. Filed March 19, 1892.

Office Supreme Court U. S.
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CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

WILLIAM WALLACE KIRBY, L. CABELL WILLAMSON, WESTEL WILLOUGHBY, ELIZABETH HOUCHENS, ELLEN A. GOUDY, AND RICHARD H. MILLER, *Appellants*,

vs.

MARIA E. TALLMADGE, *Appellee*.

No. [redacted] 96

ARGUMENT AND BRIEF FOR APPELLANTS.

JOHN T. MORGAN,
Attorney for Appellants.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

WILLIAM WALLACE KIRBY, L. CABELL WILLAMSON, WESTEL WILLOUGHBY, ELIZABETH HOUCHENS, ELLEN A. GOUDY, AND BICHARD H. MILLER, *Appellants*, } No. 377.

vs.

MARIA E. TALLMADGE, *Appellee.*

STATEMENT OF THE CASE.

A Bill in Equity was filed by the appellee against the appellants on 6th October, 1888, in the Supreme Court of the District of Columbia, alleging that certain deeds, in the bill described, are clouds upon the title of Maria E. Tallmadge to certain lots in the City of Washington, and praying that they be set aside and cancelled, and for injunction against the defendants Williamson, Willoughby, Houchens, Goudy and Miller, restraining them "from negotiating 'certain notes given by Kirby for the purchase of said lots,' or passing or disposing of any moneys any of them may have received, or may be in their control or possession, and referred to in this bill;" and that Kirby "be enjoined from paying any money to any person whatsoever because of such fraudulent purchase, or fraudulent notes, or from passing the notes into the possession or control of any other person." And further for general relief.

The nature of the alleged cloud upon the title claimed by Mrs.

Tallmadge, and the manner of its creation, is thus stated in the bill.

1. That complainant is a resident of the District of Columbia, and sues in her own right.

2. That on September 2, 1882, *the complainant purchased* lots 77 and 78, in subdivision of square 239, Washington, D. C., *advancing the purchase money to John L. Miller, who took the title in himself by deed in fee* recorded in Liber 1,015, Fol. 418, et seq., Land Records, D. C. On the same day said Miller gave five notes, each for $1,000, part of purchase money, and secured by trust on said lots recorded in Liber 1,015, Fol. 420, et seq., of said Land Records.

3. That on June 29, 1883, *said Miller purchased* the next adjoining lot 76, in said square 239, with money *furnished by complainant.* Deed was recorded in Liber 1,063, Fol. 197, and gave a deed of trust for deferred payments of $1,266, which was recorded in Liber 1,048, Fol. 161, of said Land Records.

4. That said Miller *had no right or interest in said lots,* but was simply a trustee for complainant, who paid the whole purchase money which was advanced by or for her, and was obtained by her in no way from (and not by gift or conveyance from) her husband. Complainant immediately took possession of said lots, paid all taxes and charges, received all profits, and occupied house on part of lots as her dwelling, paid all interest on aforesaid notes, and paid three of said notes. Two of them given for lot 76, and one for lots 77 and 78.

5. That said Miller and his wife by a fee simple deed dated December 27, 1883, *conveyed all of said parcels of ground and premises to complainant;* said deed was recorded October 4, 1888, in said Land Records, and is made a part of the bill of complaint.

6. That said John L. Miller died February , 1888, and by his last will dated December 1, 1880, devised his estate to his widow; will probated April 27, 1888.

7. June 16, 1888, the defendants Houchens, Goudy and Miller, as collateral heirs of John L. Miller, filed a bill in the Supreme

Court of the District of Columbia, being Equity cause 11,204, by defendants Williamson and Willoughby as solicitors, against the widow and the executor of said John L. Miller, and Henry H. Bates and Ashford and Truesdell, holders of the notes of John L. Miller, and trustees in deed of trust aforesaid upon lots 77 and 78, alleging that said John L. Miller died possessed of sub-lots 76, 77 and 78, in square 239, and of a large amount of personal estate acquired after the will was made, to which they were entitled, and praying a partition or sale; answers were filed by all the defendants; that of George M. Jones, the executor, filed September 3, 1888, denied any knowledge of any after-acquired real estate, or of the trust to Ashford and Truesdale, or that payments of the said notes should be made from personal estate of said Miller, or any knowledge of personal estate which was not returned in his inventory; that on September 4, 1888, said Lola Miller filed her answer, admitting the purchase of the lots in question by her said husband; that he conveyed them away in his life-time; denied all knowledge of the said trust, of any personal property not in the inventory, or of any real estate of which her husband died seized, or that she derived any issues or profits from the same.

8. Complainant alleges that defendants Willoughby and Williamson, after filing their bill, were informed of her title, of Miller's deed to her, of her control and possession since the original purchase, and that she furnished the money, Miller being simply trustee; that said Miller's deed was shown to both, Willoughby taking memorandum thereof, and Williamson suggesting the amendment of their bill.

9. That said defendants having learned that Miller had no title at his death, proceeded to devise a scheme to defraud complainant and avail themselves of the property. That said defendant W. W. Kirby pretended to purchase the lots, and gave his notes for the purchase; that Williamson caused defendants Houchens, Goudy and Miller to execute a deed dated August 30, 1888, conveying title to Kirby for pretended consideration of $12,000, subject to dower rights of Lola Miller, the

widow, and the debts of John L. Miller, and the balance of Miller's notes for $5,000, after applying his personal estate to their payment.

10. That a deed of trust was executed by said Kirby and wife to said Willoughby and Williamson, reciting that said Kirby had executed three notes to order of defendants Houchens, Goudy and Miller, and conveyed to Williamson and Willoughby the property subject to dower and debts.

11. That said Kirby was chosen because he was a client of said Williamson; that said Kirby is a money lender, speculator, &c.; that because of said Williamson's knowledge of complainant's rights, another person was chosen to examine the title.

12. About September 29, 1888, said Kirby and wife executed said deed of trust to Willoughby and Williamson, and it was recorded October 1, 1888, together with said deed to Kirby, in Liber 1,335, Fols. 295 and 299, Land Records of the District.

13. *That said Kirby knew complainant owned the property;* that his grantors had no title; that said Miller had conveyed the property in his life-time, *and so he avoided all sources of information, asking neither holder of the notes, widow, nor persons occupying the property, as to the title.*

14. That said Kirby, *when informed* that the property had been conveyed to complainant, replied that his attorney, after searching title, had found no record of any deed, and that he had received his deed and paid $3,000 in money, and had given three notes, each for $3,000; that the answers of executor and widow in Equity cause No. 11,204, were on file and served as notice to said Kirby; *that no money or notes were given to defendants Houchens, Goudy and Miller,* but if any was given it was to Willoughby and Williamson or some other responsible person, and such money is not distributed to the defendants.

15. That on October 3, 1888, defendant Kirby addressed a letter (Exhibit "A") to complainant's husband, which was the first intimation to complainant of pretended sale.

16. That the said deed and deed of trust are clouds upon her title.

The amended bill, filed January 23, 1889, after the original bill had been fully answered, under oath, by each defendant, consisted only of a series of special interrogatories to the respective defendants, intended to prove the bill and to disprove the answers of the defendants.

Instead of that result, the alleged frauds and conspiracy to defraud Mrs. Tallmadge were disproved, and the allegations of the bill that Kirby had either actual or constructive notice of the existence of the deed from John L. Miller to her were clearly disproved.

After exceptions to the answers of Houchens, Kirby and Miller were overruled by the Court, the complainant joined issue on the answers of all the defendants to the original and amended bills, and testimony was taken by deposition.

At the November Term, 1880, of the Supreme Court of the District of Columbia, a decree was rendered in favor of the complainant, in which "the deed of the defendants Miller, Houchens and Goudy to the defendant Kirby, and the deed of trust made by the defendant Kirby *and wife* to the defendants Willoughby and Williamson be, and are hereby, declared null and void, and are set aside." Kirby was perpetually enjoined "from interfering with the complainant's lots and premises," and the defendants Williamson and Willoughby were "likewise enjoined from enforcing or proceeding under the deed of trust to them from the defendant Kirby," and Kirby was taxed with the costs.

An appeal was taken from this decree, rendered in Special Term, to the Supreme Court of the District of Columbia, sitting in General Term, at the October Term, 1891, and the decree rendered at the Special Term was modified by striking out these words: "And it is further ordered, adjudged and decreed that the defendant Kirby be, and is hereby, perpetually enjoined from interfering with the complainant's lots and premises 76, 77 and 78, square 237, which the Court decrees unnecessary."

"As to all other matters and things in the said decree of the

widow, and the debts of John L. Miller, and the balance of Miller's notes for $5,000, after applying his personal estate to their payment.

10. That a deed of trust was executed by said Kirby and wife to said Willoughby and Williamson, reciting that said Kirby had executed three notes to order of defendants Houchens, Goudy and Miller, and conveyed to Williamson and Willoughby the property subject to dower and debts.

11. That said Kirby was chosen because he was a client of said Williamson; that said Kirby is a money lender, speculator, &c.; that because of said Williamson's knowledge of complainant's rights, another person was chosen to examine the title.

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13. *That said Kirby knew complainant owned the property;* that his grantors had no title; that said Miller had conveyed the property in his life-time, *and so he avoided all sources of information, asking neither holder of the notes, widow, nor persons occupying the property, as to the title.*

14. That said Kirby, *when informed* that the property had been conveyed to complainant, replied that his attorney, after searching title, had found no record of any deed, and that he had received his deed and paid $3,000 in money, and had given three notes, each for $3,000; that the answers of executor and widow in Equity cause No. 11,204, were on file and served as notice to said Kirby; *that no money or notes were given to defendants Houchens, Goudy and Miller,* but if any was given it was to Willoughby and Williamson or some other responsible person, and such money is not distributed to the defendants.

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"As to all other matters and things in the said decree of the

Special Term, the same is affirmed with costs." The Appellate Court then added the following: "And it is further ordered, adjudged and decreed by this Court that the defendant Richard H. Miller do, upon the demand of the said Kirby, refund to him the ($3,000) three thousand dollars in money paid him by the said Kirby, and that the said Miller, upon like demand, also deliver up to the said Kirby the three notes for $3,000 each, described in the answers of said Miller and Kirby, which were delivered by the said Kirby to the said Miller."

And to this decree, brought before this Honorable Court on appeal, the appellants make the following assignments of error in the record of the proceedings in said cause.

Assignments of Error.

First. That there is no ground of equitable jurisdiction or relief set forth in the original and amended bills exhibited and filed in this cause.

Second. That upon the facts as stated in the original bill exhibited and filed in this cause, the complainant therein, if she is entitled to any relief, has a plain, adequate and complete remedy and protection at law.

Third. That the defendants in the original and amended bills, and especially the defendant Wm. W. Kirby, has the right to have the validity of his title to the lots of land described therein, passed upon by a court of law and a jury; and, to this end, an issue at law should have been awarded, if the Court had any jurisdiction of the cause.

Fourth. That the original and amended bills, exhibited and filed in this cause, are devoid of equity.

Fifth. That, upon the facts as they are proven in the record of the proceedings in this cause, the complainant Maria E. Tallmadge has no right, or standing, in a court of equity, to

claim the relief that is demanded in the prayer of her bill, or any relief in connection therewith.

SIXTH. That both in law and in equity Wm. W. Kirby had a perfect title to the land which is the subject-matter of this suit, as against Maria E. Tallmadge.

SEVENTH. That the bill of complaint filed in this cause is not suited, or adapted, to the granting of any relief to Maria E. Tallmadge upon the facts stated in said bill, if they have been proved on the trial of the cause; or to the enforcement of any trust, or lien for purchase money, upon said land, or against the estate of John L. Miller, for any money advanced by her to said Miller with which to purchase said land. The facts are not stated in the bill, but only conclusions of fact, and they are stated in an indefinite and insufficient form.

EIGHTH. The persons who own the outstanding purchase money notes, given by John L. Miller, or their trustees, are indispensable parties, either complainant, or defendant, to this suit.

NINTH. The Court had no jurisdiction to declare the deed of Miller's heirs to Kirby as being null and void, or the deed of trust given by Kirby and wife to the trustees to secure the notes of Kirby given for the purchase of the lots, to be null and void, as between the parties to said conveyances, there being no facts, allegations, or charges, in said bill which put such matters in issue between said parties.

TENTH. The Court had no jurisdiction, upon the pleadings and proofs in this cause, to decree the injunction placed upon the defendants, or any of them.

ELEVENTH. George M. Jones, as the executor of John L. Miller, is an indispensable party to this suit.

TWELFTH. Lola Miller, the widow of John L. Miller, "and Henry H. Bates and Ashford and Truesdell, the holder of the notes and the trustees in the deed of trust," still unsatisfied, "upon lots 77 and 78," are necessary parties defendant to this suit to clear off the clouds and quiet the title to the said lots.

THIRTEENTH. The bill discloses the pendency, in the same Court, of a bill in equity to charge the original unpaid debt for the purchase of these lots upon the personal estate of John L. Miller, by his heirs at law. The complainant knew of the suit, and did not become a party to it, as was her right and duty, but stands by and permits Miller's personal estate to be charged with a debt which she admits that she owes. This action is a fraud upon the jurisdiction of the Court, which is disclosed on the face of her bill. It is an experiment upon justice, which excludes her from claiming the protection of the Court in a separate suit.

FOURTEENTH. And the appellant, Richard H. Miller, separately assigns for error that part of the decree of the Court, in General Term, which requires him to refund to Wm. W. Kirby, upon his demand, three thousand dollars in money paid him by said Kirby, and also that he shall, upon like demand, also deliver up to said Kirby the three notes for $3,000, each, described in the answers of said Miller and Kirby, which were delivered by the said Kirby to the said Miller. In this, (*a*) that, the pleadings in said cause do not support such a decree; and (*b*) in this, that the proofs in the cause do not justify such a decree, and (*c*) in this, that the mandate of the Court is personal to said Miller, and may be followed, if not complied with, by a proceeding for

contempt of the order of the Court, at the election of Kirby, and without a day in Court being allowed to Miller, to show cause why a peremptory mandate should not be entered in said cause against him; and for this, (*d*) that, upon the pleadings in this cause, the court of equity cannot render a decree *for money* in favor of said Kirby and against said Miller.

ARGUMENT UPON THE FACTS AND THE LAW, AS APPLIED TO THIS CASE.

1. Mrs. Tallmadge having, in her bill, accepted the deed from John L. Miller, as an execution of all prior oral agreements, trusts, or equities between them in his voluntary efforts in her behalf, which were without interest, profit, or compensation to him, must stand upon the title she thus acquired. If that deed was valid and was actually delivered to her by Miller, she held a legal title superior to that of Kirby, provided she had made it good as against a subsequent *bona fide* purchaser, by having it registered as required by law. If the deed was inoperative, as to Kirby, because it was not so registered, or, if it was effectual because Kirby had notice of the existence of the deed, in either case, *her laches is the sole ground upon which she claims the interposition of a court of equity.*

2. This claim is not in accordance with the principles upon which courts of equity will, sometimes, interfere to deprive the holders, or claimants of lands, of the common law right of trial by jury. In such cases, *there must be some need* for the exertion of wider or more flexible powers, than a court of law can employ, *to do complete justice.*

"Whenever a court of law is competent to take cognizance of a right, and has power to proceed to a judgment which affords a plain, adequate, and complete remedy, without the aid of a court of equity, the plaintiff must proceed at law, because the defendant has a constitutional right to a trial by jury."

Hipp *vs.* Babin, 19 How., p. 278.

If Kirby has the better title to this land, it is the lawful duty of Mrs. Tallmadge to yield the possession to him, and she cannot deprive him of the right to a jury trial by holding on to the possession and, on that sole ground, ask a court of equity *to set aside the deed under which he claims the land, and enjoin him from setting up his title in any other suit.*

Such a proceeding, upon the facts stated in the bill in this case, would deprive a law court, with its constitutional trial by jury, of its jurisdiction, even if Kirby were suing in such court to establish his title and recover possession. It would place an actual possession, under claim of title, above the actual title, that a jury might determine is valid on a trial by them. It would be to usurp a jurisdiction and enforce it by injunction against the law court and its suitor, in every real action, in despite of both the Constitution and the statute, and would result in the abrogation of the common law, to that extent.

3. But Mrs. Tallmadge has disclosed a state of facts, in her bill, that is confirmed by the testimony, which shows that the delay in recording her deed from Miller *was intended to withhold it from the knowledge of Miller's heirs and from the world for purposes that are wholly inequitable and unjust.* She occupies the position that forbids a court of equity to interpose its powers of injunction, or to declare void, or to cancel muniments of title, in favor of one who would abuse the jurisdiction of the court.

Wheeler *vs.* Sage, 1 Wall., 518.
Kitchen *vs.* Reyburn, 19 Wall., 254.

"Conscience, good faith and reasonable diligence alone can call into action the powers of a court of equity."

McKnight *vs.* Taylor, 1 How., 161.
Creath *vs.* Sims, 5 How., 192.
Buchanan *vs.* Upshaw, 1 How., 56.
McQuiddy *vs.* Ware, 20 Wall., 14.

These cases and others declare principles that are fatal to the standing of the complainant in a court of equity, and her failure to offer to discharge Miller's estate from the debt of $4,000, for the lots, or to compel Miller's heirs and Kirby to interplead as to this demand, and as to the validity of the notes given to them by Kirby, *is a fatal omission to offer to do equity in this proceeding.*

4. Beyond that, also, the manifest purpose of the complainant was to stand by until the pending suit in chancery should be decided and the debt for $4,000, resting upon Miller's estate, alone, and not legally upon her, should be paid, by the decree of the court, either by a resort to his personal or his real estate. She did not come in as a party to that suit, *though advised by counsel to do so, and she refused to do so.* She left the debt of $4,000, for unpaid purchase money, which she admits that she owed, though there was nothing to show that she owed it, or had any connection with it, to be charged upon Miller's estate, *while she held Miller's covenant of warranty of title, free from incumbrances, to reimburse her, if the lots should be sold for the payment of her own debt.* A more obvious and pronounced scheme to do a great wrong to Miller's estate, could scarcely be imagined.

5. It is not rational to suppose that Miller's heirs, if they had known or suspected that this debt for $4,000 was, in justice and equity, the debt of Mrs. Tallmadge and that she held his deed for the land, upon which there rested a recorded mortgage, or deed of trust for the $4,000, would have filed a bill in equity to charge that money, *as a debt of their ancestor,* upon his real estate. These facts, stated in the bill of complaint, show, conclusively, *that Miller's heirs were not informed that he had ever conveyed these lots to Mrs. Tallmadge,* and with equal force they prove that Kirby did not know of any such conveyance. He paid a large price for these lots, *of which* $3,000 *was in cash,* and his only chance to make a speculation was, that the Court would charge the incumbrance of $4,000, for purchase money of these lots, *upon Miller's personal estate.* But Mrs. Tall-

madge knew that she held Miller's deed and covenant of warranty for these lots and that, if his personal estate was charged with the debt, *that she would escape the payment of* $4,000. She was silent, until Kirby came in and bought the lots, and then she saw that, in the effort she was making to dump her debt on Miller's personal estate, by concealing her deed, under lock and key in her husband's box, under his cautious guardianship, she had not counted upon the coming in of a *bona fide* purchaser to claim the title as against her unrecorded deed. *In the great caution to hide her deed from Miller's heirs, she had overreached herself,* and then she rushed into the court of equity to get a decree that would relieve her from the consequences of her laches and covin, in not having her deed put on record, as the law requires, to save the community from just such lurking dangers.

6. Upon the question of the credibility of the testimony, to prove this very peculiar case, it is very clear that it is not consistent with any ordinary course of dealing among persons who purchase real estate, or engage in any kind of business transactions. Mrs. Tallmadge's father was a man of some means, according to her statement, and lives in the house with her, and gave her money and bonds. *Her brother-in-law, L. C. Tallmadge, was an expert business man,* and was remarkably liberal, considering his limited means, in supplying her with money and bank checks to "advance" on this property. Mr. A. N. Eddy, who handled considerable sums of stocks for Mrs. Tallmadge, was a business man, though not engaged in large transactions. Mr. Cary was a lawyer in New York and was paymaster to Bates for a note of $1200; sending his personal check for the amount. John L. Miller was a business man in Washington, with a moderate amount of property, and was a sound merchant. Mr. Tallmadge was a very competent and energetic business man, doing business in Washington and New York, and living amicably with his family. No fact is stated to show his financial condition. Mr. Bates, the vendor of the property, is a careful and cautious man, even to the wording of

receipts that he gave, after Miller's death, to "*Miller's heirs*" for payments of interest on the purchase money notes. In all the dealings of all these people as to this land, *not one word is in writing* that, in any way, binds Mrs. Tallmadge, or in any way connects her with the transaction, except the deed of John L. Miller and his wife, dated December 27, 1883, which was received for record 4th October, 1888, at 9.45 o'clock A. M.

7. The *res gestoe* of this pretended agreement proves its dishonesty. The first transaction in the purchase of these lots was in August, 1882. *That was between H. H. Tallmadge, the husband of complainant, and Henry H. Bates, who made a memorandum of the agreement at Tallmadge's request, and Mr. Tallmadge paid him* $100 *to bind the bargain.* Mrs. Tallmadge was present a part of the time, *but Bates had no conversation with her. He did not deal with her in any respect.* (Record, p. 89.) H. H. Tallmadge told him afterwards that John L. Miller was the purchaser, and, after several days, the deed was made to Miller at Tallmadge's request, the $5,000 was paid him by Miller, and Miller's notes were given for the deferred payment of $5,000. Bates was surprised to find that Miller had become the purchaser, but made no inquiry. The deed of Miller to Mrs. Tallmadge *was kept under lock and key, in a box, by H. H. Tallmadge,* her husband, and he has occupied the house with his family, continuously, up to the present time.

It is impossible to believe that this meager account of this involved and peculiar transaction discloses the real truth of the whole matter.

Mrs. Tallmadge was examined as a witness in her own behalf. In her deposition, (pp. 64 and 65 of the Record,) she testifies that she and her husband were in New York on September 13, 1883, (Record, p. 112,) and it appears that H. H. Tallmadge sent Mr. Cary's check for $1,150 to pay one of the notes for $5,000, and interest, to Bates. She testified that "when *we* bought the house *we* paid five thousand dollars cash, and then gave notes for five thousand dollars. *We* were to pay one thousand dollars each year with interest, and *we* took up the

first note and paid our interest. It was not convenient for *me* to take up the others, and *we* paid the interest, which was agreeable to Mr. Bates."

Her sworn statement, not, in the least, contradicted by any writing, or any other fact in the case, except Miller's deed, shows that *her husband was using her name to conceal a transaction that was, really, for his benefit*, and is still doing so. Tallmadge did not testify in the case, and his wife, incautiously, said too much. He could have explained everything. Why did he not help his wife out of this trouble?

8. The only light the complainant has let in upon this case destroys the credibility of her statements, so that they have no weight as against the answers of the defendants. But, as to the party who held the actual possession of the lots, the testimony of Bates and of Mrs. Tallmadge shows that the husband (H. H. Tallmadge) held the possession *under the only memorandum in writing that existed*, until the deed from Miller to Mrs. Tallmadge was signed. In law, as in fact, the possession was that of the husband, for the first 16 months after the purchase of the lands. The actual possession did not change after that date, and the deed, if it was ever delivered to Mrs. Tallmadge, did not work a change of legal possession.

She never saw it, after Miller had signed it, until the day it was recorded. It came into the exclusive possession of her husband, and he kept it closely locked up, in a box, of which he kept the key, until it was recorded. (See Record, pp. 78-79.) In fact, the deed was never actually delivered to Mrs. Tallmadge.

9. There must have been some disagreement between Tallmadge and his wife as to the ownership of this property. He is a competent witness, and the one person living who could explain the whole transaction, and could prove, if such was the fact, that the possession of the property was not in his right, but in that of his wife. He was not examined as a witness, and nothing is said or intimated in the bill to account for his transacting this business, sometimes in Miller's name and at other

times in his own name, *but never in the name of his wife.* The bill excludes the husband from ownership in the "purchase money" which "was advanced by, or for her and obtained by her in no way from (and not by gift or conveyance from) her husband." This meager description of a separate estate is very cautiously made, under oath, and is a strained effort to avoid, or get rid of her husband's connection with the purchase, by comprehensive and negative conclusions, which are made to do duty in place of candid statements of plain, simple and conclusive facts.

If the husband was free from embarrassments, and was a good business man, and had no good reason for refusing to his wife the ownership of a separate estate, the law would have encouraged him in such a benevolence towards her. But, evidently, some circumstance, known to the husband, who is dumb while his wife implores the Court for help, and to Miller, who is dead, caused these parties to change the attitude of Miller from being the actual agent of the husband to that of being the apparent agent of the wife. There is a reason, *connected with the right of possession* of this property, that struggles for disclosure in this curious transaction, but the bill conceals it.

10. The very remarkable dealings of Lewis C. Tallmadge with his sister-in-law, Mrs. Maria L. Tallmadge, as stated in his deposition, (beginning on p. 46 of the Record,) and the hesitating, contradictory and evasive character of his statements, and the fact that he was then in partnership with her husband as a claim agent, discolor the whole transaction with a suspicion of fraud that debars a court of equity from giving effect to it on the complaint of Mrs. Tallmadge. Her deposition makes these pretenses of equitable title in her still more incredible.

11. These parties were all in a condition where justice requires of them a full and frank disclosure of all the facts in which the alleged rights of Mrs. Tallmadge originated, but only concealment, evasion and improbability are resorted to in order to obscure the truth.

12. No sufficient proof is made of the delivery of Miller's deed

to Mrs. Tallmadge. It is very evident from the deposition of William C. Duval, the Notary who took the acknowledgment of the deed of Miller and his wife to Mrs. Tallmadge, that he did not know of the actual delivery of the deed to her. The complainant did not venture to ask him that question.

His certificate as to the separate examination of Mrs. Lola Miller is shown to be false by the deposition she gave in the case. Her deposition, which is a simple and pathetic statement as to the part she took in this scheme of double dealing, shows that she has been robbed of her rights of dower, in the reckless game of covering this property under a mask of legal right, to conceal some hidden fraud.

13. In any just view of this case, upon the pleadings and evidence, the possession of these lots claimed by Mrs. Tallmadge is not such a possession in fact, in law, or in equity, as is equivalent to notice of an unrecorded deed, in her favor, against a subsequent purchaser for value.

The deed of Bates, and that of Claggett, to Miller, were both duly executed and recorded, as were Miller's mortgages to them; and they were mere traps to deceive honest purchasers of the land from the heirs of Miller, if they must yield to an unrecorded deed that was locked up in a box, and hidden away by the husband of Mrs. Tallmadge.

The deception of this situation is still more manifest when Mrs. Tallmadge shows in her bill that she knew of the pendency in the same court, of the suit by Miller's heirs against his executor and his widow, to charge the debt that she now pretends to owe for this land upon the personal estate left by Miller at his death. She was fully informed that the suit was based upon the fact that the land belonged to Miller's estate, and she even then refused to record her deed to it.

Kirby was without notice, either actual or constructive, and is the equal at least in his equities to Mrs. Tallmadge, and better deserves the protection of the Court.

The foregoing views are based upon *the equitable rights* of the

parties, if the Court should entertain the bill as a case falling within its equitable jurisdiction.

14. The statute destroys the right of Mrs. Tallmadge in this land as against Kirby, whatever rights she may have against the estate of Miller, either upon the covenants in Miller's deed to her, or upon her right to recover the money paid to Bates and Claggett as purchase money for the lands. But, if she has lost the land by her laches, it is difficult to perceive how that fact would give her a right of recovery for the money paid for the land, against Miller's estate, in any view that can be taken of the matter.

15. The answers of Kirby to the bill and to the interrogatories propounded to him, establish the fact that he had no knowledge of the existence of the deed from Miller to Mrs. Tallmadge, or of any fact that would create in his mind a suspicion or excite any inquiry as to its existence. He had the records examined by a competent attorney, and an abstract of title made from the records.

See Hitz *vs.* The Bank, 111 U. S., 727.

He had no notice or suspicion of Mrs. Tallmadge having a claim of title, or of possession of this property. He took every cautionary step that a prudent man could take in the examination of the title, and there is not the least flaw in the chain of evidence on these points. His conduct throughout his entire connection with the purchase of this property was free from all suspicion of fraud, or covin, or conspiracy. These facts are proven by the statements of every defendant in the case, and are not attempted to be disputed by any of the witnesses. So then, unless the fact that Mrs. Tallmadge lived in the house with her husband gave her the same superiority of right over a *bona fide* purchaser for full value, that would have been afforded her by a prior deed, duly recorded, she cannot hold this land lawfully

as against Kirby. The only fact that could have been in reach of Kirby's efforts at discovery, without trespass or impertinence, was that she lived on the premises with her husband, and this he could not have learned as a matter of rightful, or even proper inquiry, except from some neighbor. If Mrs. Tallmadge had refused to inform him, a stranger, of her claim to the property, she would not have increased his rights as a purchaser.

16. The facts of this case furnish a perfect illustration of the necessity of the statute that requires that notice of title be given by recording the deed of the claimant. A memorandum on the record of *the mere existence of a deed*, without giving a copy of it, would not be such legal notice of it as would protect the claimant against a subsequent conveyance, duly recorded. Can a better protection arise out of "notice" given by mere possession of the land, or "notice" of the existence of a deed, which did not disclose its terms, or the manner of its execution, or knowledge, or information, or belief, that a deed existed? The words "without notice" *in the statute*, must mean something more than a circumstance that would lead to further inquiry, such as mere possession of the property. It means notice of the existence of a fact—a deed—and not a mere conjecture that the occupant would be likely to hold a deed to the premises.

17. The Statute of 29th April, 1878, repealed two sections of the Revised Statutes, and substituted a law that was more stringent in its provisions upon the claimants of real estate in virtue of mere occupancy of the land. That act was indispensable to give *proper security* to purchasers of real estate, and to creditors, in this District, where very few of the owners of lots live on them, and where tenancies that are continued for many successive years, are common. As a rule, it is seldom that the owner occupies his own property in this District, and inquiry as to the title to real estate would be futile, and actual titles would be greatly endangered if the records provided by law are not made, by the Courts, the repositories of the legal history of titles,

instead of the loose and misleading proofs of titles that come from possession of the premises, or some other incident that would create inquiry in a mind controlled by ordinary caution.

In this Court, in Hitz *vs.* The Bank, 111 U. S. Rep., p. 728, it is decided that the "notice" must be of the *existence* of a prior deed to defeat the rights of a creditor or subsequent purchaser.

This ruling has not been departed from in any later case. This case does not require a further definition of the meaning and purpose of this act; but it should be given to this effect; that as the recording of a deed in all its terms and provisions is required to make it operative as to creditors and to subsequent purchasers; the term "without notice" means a notice of the character or terms of the deed; and it means that the notice must be given by the holder of the deed in some form to the creditor or purchaser. This is as clearly his duty as is the recording of the deed. It is a valuable privilege to the holder of the deed, if he can give notice of it, by his possession under a deed, in case it is not recorded, for any cause, as, in a race of diligence, as to which deed can be first lodged for record. The feature of the statute, fixing the priority between deeds lodged for record, on the same day, is clearly framed upon this idea, that giving notice of the prior deed will prevent the junior deed from acquiring legal precedence by being first lodged for registration.

The bill states that Mrs. Tallmadge's claim to those lots dates from September 2, 1882, and Kirby's purchase of them was in October, 1888. During this period of more than six years, Miller's deed to Mrs. Tallmadge, dated December 27, 1883, was locked in her husband's box, where it remained, without any hint of its existence until Kirby had bought the land. Miller died in February, 1888, and in June of that year his heirs instituted a suit in equity against his executor and his widow to charge the debt to Bates, for the purchase of the lots, on the personal assets of Miller's estate. Mrs. Tallmadge was informed of the pendency of the suit and declined to become a party to it. She introduces these facts into her bill, and gives no reason or

excuse why she does not set up her alleged rights in that suit, which is still pending. She still hid her deed.

18. The intendments are against the pleader in such a case. She shows that this bill in equity, which she identifies by its docket number, 11,204, is yet pending, but does not explain why she stands by and permits Miller's heirs and executors to litigate over debts she claims to owe, for the purchase money of lots to which she claims title. "We are left wholly in the dark as to these important particulars, and, under these circumstances, every thing must be presumed against the pleader."

Evers *vs.* Watson, 156 U. S. Reports, p. 531.

The presumptions are that:

1. That Mrs. Miller's rights, and especially her dower rights, are stronger than any rights of Mrs. Tallmadge, and this prevented her from exposing her title in a contest with Mrs. Miller's right of dower.

2. That Miller's heirs had a better right to the lots than Miller's alleged deed conveyed to Mrs. Tallmadge.

3. That she was entirely willing to leave her title in darkness and concealment until Miller's estate had paid the debt to Bates, and then she would claim the lots under her deed, *as a sale and conveyance by Miller to her*, for the consideration therein acknowledged to have been paid by her to Miller, of $11,900.00 in cash, and she would rely on the full covenants of warranty in the deed to compel the estate of Miller to pay off the remainder of the debt of Miller to Bates, for purchase money, ($5,000.00) for which he held a mortgage on the land under Miller's deed of trust, given to secure the purchase money.

4. The principle declared in Evers *vs.* Watson, *supra*, applies with crushing effect to the structure of this bill, which is very artfully contrived so as to conceal from Miller's heirs *the facts* upon which her alleged trust, or equity, is based.

The bill states only this, as to every transaction between Mrs. Tallmadge and Miller, as to lots 77 and 78, that "on or about

2d September, 1892, complainant purchased two lots * * * and advanced the purchase money for the same unto John L. Miller, who took the title to himself by a deed in fee simple, which was duly recorded in Liber 1,015, Fol. 418, *et seq.*"

This deed was in evidence, but *the deed of trust given to secure five notes of* $1,000 *each, "in part payment of the purchase money," is not in the record and was not in evidence.* The only other statement of any transaction about these lots between Miller and Mrs. Tallmadge in her bill is this: "The said Miller, and Lola, his wife, by a deed in fee simple dated 27th day of December, 1883, did convey all of said pieces or parcels of ground and premises unto your complainant."

These are the only facts stated in the bill to support the averment, or charge, "that the said Miller *had no right or interest* in any of the above pieces or parcels of lands and premises, *but was simply a trustee* for this complainant, and the whole of the purchase money was advanced by, *or for* her, in no way from (and not by gift or conveyance from) her husband."

This state of facts is not only consistent with the legal presumption that Miller paid the money, whatever the sum was, to the person, whoever it was, that conveyed the land in fee simple to him and took his deed of trust to secure the unpaid notes, to mature at dates that are not stated; but the evidence in the case establishes the truth, which the bill artfully conceals. The rule laid down in Evers *vs.* Watson, however, stops this inquiry before the evidence can be considered, because the Court will not entertain the suit of one who will not state, in his bill, and in issuable form, *the facts* that constitute the ground of his claim and his prayer for relief, but, when the testimony is looked to, as furnishing facts beyond the scope of the case as stated in the pleadings, if that could be done under the rules of chancery pleading and practice, there is disclosed a covinous and smartly contrived plan to convert Miller's deed to Mrs. Tallmadge into proof of her possession of the land, in her own separate right, as distinguished from the possession of her husband.

This gave rise to the necessity for the averment that her

husband had no interest in these lots, and the necessity of his swearing to his answer to the bill, doubtless, suggested that he should be omitted as a party to the suit, and as a witness.

19. The bill estranges Tallmadge from all interest in the land, and his possession of the deed of Miller did not create any seizin in her by presumption of law. In such a case, the law would apply the rule *caveat emptor* to his occupancy, as the owner of the land, rather than to that of the wife.

Her bill discloses nothing on this subject, while her testimony shows that the deed was kept carefully away from her control, or even her access, so that if Kirby had requested her to show it to him, as it must be assumed he had the right to do when its existence and contents are claimed to be within reach of his due inquiry and to affect his rights as if it had been duly recorded, she could not have produced it at any time after Miller had executed the deed.

20. The evidence, taken altogether, is replete with hesitating and contradictory accounts and incidents of a transaction that is entirely out of the usual course of business transactions. Indeed, there is scarcely one feature of it that is not strongly suggestive of afterthought, covin, contrivance, concealment and false coloring of the real state of facts. The conduct of Tallmadge and his wife, throughout, cannot be rationally consistent with the theory of the bill, that she was the owner of money that she wished to invest in a home. She is not shown to have had any money, or any credit with any person save her husband's brother, and his kinsman, by marriage, Mr. A. N. Eddy, who was not sworn as a witness. In all the peculiar transactions through which this money—in all, more than $8,000—was raised, Mrs. Tallmadge never gave a note, obligation, receipt, or any paper writing, or even a verbal promise to pay back borrowed money, nor was any agreement made by her as to date of payment, or any other thing.

All the money she got, according to her statement, was a mere windfall that came through the generosity of her relatives

by marriage, who were persons of very limited means. This curious combination of facts, if they are to be accepted as true, introduces the husband, whose name, even, is not stated in the bill, as the contractor with Bates for lots 77 and 78, who made a memorandum of the sale to Tallmadge, and accepted from him the payment of $100 to bind the bargain several days before the deed to Miller was made, much to the astonishment of Bates, who did not know Miller in the transaction.

21. Miller made no deed and gave no writing, for more than a year after this initial transaction, to Mrs. Tallmadge, or at any time to her husband. No delivery of a deed from Miller to H. H. Tallmadge is claimed in the bill. He held Bate's deed to these lots, and Bates held his notes for $5,000, and a mortgage to secure them. So far as the evidence discloses there was no motive, on Miller's part, for anything but a straight business transaction, and he had, apparently, the protection of good security for his risk. He was paid nothing for this risk, and took no writing from Tallmadge, or his wife, and he gave none to either of them to explain the alleged "trust," or his relation to the property, or to indicate the existence of a "trust."

In the meantime, Miller had received a deed from Claggett for lot 76, which was paid for. Then "the said Miller, and Lola, his wife, by a deed in fee simple dated the 27th December, 1883, did convey all of the said pieces or parcels of ground and premises unto your complainant." And this is all that is said about the deed and its delivery in the bill of complaint. But, the evidence of the complainant and her witnesses rebuts the possible legal intendment that this deed was ever actually delivered to Mrs. Tallmadge, because it was acknowledged before a Notary Public.

22. It is clear from the deposition of Mrs. Lola Miller that the certificate of Duvall, the Notary before whom the deed was acknowledged, was false as to her separate examination, and she still has her right of dower in those lots.

W. C. Duvall's name is subscribed to the deed as the only subscribing witness. He was three times examined as a witness in

the cause, and was never asked a question about the execution and delivery of the deed. Tallmadge was not examined in the case, and the question of the actual delivery of the deed by Miller to Mrs. Tallmadge rests alone upon her statements. Lewis C. Tallmadge, who wrote that deed, and came from Chicago for that purpose, says that it was neither signed, acknowledged, or delivered in his presence. (Record, p. 49.) Mrs. Tallmadge's statements as to the execution and delivery of the deed, (Record, pp. 78-9, 82 and 83,) are that: "Mr. Miller brought it to the house." "It was in my house." "I had not seen it." "It had been lying in the house; I thought it was recorded; I had asked him (Tallmadge) to have it recorded for me, and I supposed that it had been done, but he was traveling away most of the time.',

Q. Did you not know—was the deed around the house?
A. I had not seen it. It had been lying around the house.
Q. Where?
A. In a private box.
Q. Who carried the key?
A. Mr. Tallmadge carried the key, but he had neglected having it done because he was out of the city at the time.
Q. You had no access to the box?
A. No, sir.
Q. Do you mean to tell us, from the 27th December, 1883, when that deed was executed, until June 16, 1888, you had never examined that deed?
A. No, sir. I supposed it had been recorded.
Q. Had you seen it?
A. No, sir; but I supposed it had been recorded. * * *
Q. Why did you examine the matter subsequently?
A. When I inquired of my husband he told me that he had neglected to have it recorded.
Q. Did he take that deed out of his private box of which you have spoken?
A. Yes, sir; and showed it to me.
Q. Had it never been recorded?
A. No, sir; not at that time.

22. Tallmadge was kept in the shadow of a dark background in all these dealings, but he was the real wire-puller of the whole business.

23. Bearing in mind that Miller's deed to Mrs. Tallmadge was signed, or dated, December 27, 1883, and that she was, on the theory of her bill, the real debtor for principal and interest on the unpaid purchase money notes given by Miller for the lots, it is impossible, in view of the following facts, to believe that this was a transaction between Miller and Mrs. Tallmadge, and was not a dealing between Miller and Tallmadge, viz: Bates made the trade with H. H. Tallmadge; he never exchanged a word with Mrs. Tallmadge about the sale and did not know she was interested in it, nor did he hear her name mentioned during the whole period, covering several years, as being interested in the property.

H. H. Tallmadge, in person, made payments of $120 each, on the interest due on the unpaid notes amounting to $4,000, at 6 per cent. as follows:

March 14, 1884,	$120
March 12, 1886,	120
September 13, 1886,	120
March 14, 1887,	120
September 8, 1887,	120
March 15, 1887,	120
	$700

The receipts show that Miller made payments of interest, in person, to Bates, as follows:

September 15, 1884,	$120
March 12, 1885,	120
September 12, 1885,	120
	$360

The receipt given to "John L. Miller, per H. H. Tallmadge," September 8, 1887, was for "interest due September 12, inst., *on* $4,000 *loan.*" It was paid "per draft No. 5447, U. S. Bank of Hartford, Conn., on Chemical Bank of N. Y."

Mr. Bates, unaware, let in a light on this transaction, in the

words above quoted, that he failed to darken with a convenient explanation in his deposition. His answers to questions were extremely exact, as literal replies, and he did not venture on clearing up the question why he received $120 from H. H. Tallmadge "in payment of interest due September 12, inst., *on* $4,000 *loan.*"

He made no loan of $4,000 to Mrs. Tallmadge, or to Miller, but this $120 is paid upon and applied to Miller's notes of $4,000 given for the lots. It was a loan to H. H. Tallmadge of the $4,000, due on Miller's notes, according to Bates' receipt. Tallmadge had Miller's deed to the lots, locked in his box. It was dated 27th December, 1883. Somebody had paid Bates the interest on the purchase money notes, dated September 2, 1882, (as stated in the bill,) but the note was produced in evidence, marked "Paid and cancelled September 12, 1883," and is dated the 12th September, 1882, (Record, p. 113.) But no receipt appears of earlier date than March 15, 1884, and that payment was made by "Miller per H. H. Tallmadge." The interest on the note for $1,000, due and paid September 12, 1883, and on four notes for $1,000, each from September 12, 1882, to September 12, 1883, is not accounted for.

Mrs. Tallmadge states on oath, (Record, pp. 64-5,) "when *we* bought the house *we* paid $5,000 cash and then gave notes for five thousand dollars. *We* were to pay one thousand dollars each year, with interest, and *we* took up the first note and paid our interest. It was not convenient for *me* to take up the others and *we* paid the interest, which was agreeable to Mr. Bates."

On page 86 of the Record, the counsel of Mrs. Tallmadge endeavored to extricate her from these incautious admissions, which were too natural to be incorrect, but she failed to explain why the pronoun "we" was used in describing the purchase of the property. Her explanation, in itself, is very weak, but it is limited to the manner of *paying the interest on the notes, and does not relate to the purchase of the lots.* In reply to the question, "What do you mean by "we"? her answer is, "I went, generally, for everything, but whenever I wanted my husband

to attend to anything he went, but it was my money that paid for all. I said that sometimes my husband attended to it and sometimes my father."

Q. That is what you meant when you said "we"?
A. Yes; or any other member of the family who would go. That is what I meant.

The explanation only makes the pronoun "we" the more significant of a joint action, when it is applied to the purchase of these lots.

24. On page 91 of the Record Bates testifies that Kirby, after he had purchased these lots from Miller's heirs, offered to pay him the four notes of $1,000 each that he still held as a mortgage incumbrance on them, and he declined to accept it. Bates would not, and could not, have refused to permit Kirby to remove this incumbrance from the property that he had received payment of interest upon *from H. H. Tallmadge, for Miller's heirs, since Miller's death*—the principal being long overdue—*unless he had, in some way, changed this debt, by agreement with Tallmadge, into a personal debt against him, instead of a debt against Miller's estate.*

25. This change in the status and obligation of these four notes was first disclosed in the receipt given "John L. Miller per H. H. Tallmadge, Esq., for semi-annual interest due March 12th on loan notes for $4,000," and, again, on September 8th, 1887, "$120 *in payment of interest due September 12, inst., on* $4,000 *loan.*" This was the date of the maturity of the last of these notes, and Bates and H. H. Tallmadge, *in writing, fixed their future status, as a loan from Bates to Tallmadge.* Miller died in February, 1888, and Bates and H. H. Tallmadge then arranged a corrupt falsehood to cover up the truth by this "loan" arrangement, and still to hold the estate of Miller bound for the four notes, then overdue, of $1,000 each. To set this scheme on foot, Bates gave the following receipt to H. H. Tallmadge:

U. S. PATENT OFFICE,
WASHINGTON, D. C., March 15, 1888.

Received of heirs of John L. Miller, deceased, one hundred and twenty dollars ($120) in payment of semi-annual interest due March 12th, 1888, *on loan of* $4,000.

HENRY H. BATES.

The deed of trust given by Miller to secure the purchase money of the lots is kept out of the record, and we do not know what its recitals are. The notes express no special consideration and may as well relate to money loaned as to a sale of land, (see one of this set, on p. 113 of the record,) and H. H. Tallmadge kept the deed from Miller, hid in a locked box.

Miller's heirs knew nothing about the transaction, except what the records of the land registry showed, and that was the conveyances to Miller, from Bates and from Claggett, for three lots, 76, 77 and 78, and deeds of trust to trustees to secure debts. Claggett's mortgage was satisfied, on the record, and Bates' mortgage that stood for $5,000, besides interest for six years, the payment of $1,000 not having been credited on it.

They paid no money to Bates, as he falsely states in his receipt, so given for the purpose of committing them, as far as he could, to an acknowledgment of the debt as being obligatory against Miller's estate. (See his flippant explanation of this fraud, in his deposition, Record, p. 90.)

Tallmadge concluded that Miller's deed to Mrs. Tallmadge would estop his heirs, even if it was fraudulent and, not apprehending that they would sell their record title to a *bona fide* purchaser, *he still kept his deed in hiding that the estate might be forced to pay the debt to Bates, as it appeared of record.*

26. All the heirs, and Kirby, swear, in their answers, and upon interrogatories propounded to them, that what appeared on the public records was all that they knew about the title, or the condition of the property, and that they had no suspicion of any different state of facts. The answers of all the defendants,

to the bill, and to the interrogatories, are full, complete and conclusive on this, and upon every fact that could be within their knowledge, information, or belief, touching this transaction.

27. On the 16th June, 1888, the heirs of John L. Miller filed a bill in equity, as stated in this complaint, asking a partition of the lots sold by Bates to Tallmadge, and for other purposes. Within a short time from that date Mr. Duhamel, complainant's solicitor, informed her of the suit and its objects, and advised her to have the deed from Miller recorded. She did not show the deed to him; it was still locked in her husband's box.

This deed was recorded October 4, 1888, nearly four months after said suit had been instituted.

The deed from Miller's heirs to Kirby was executed and recorded October 1, 1888, and the deed to Mrs. Tallmadge, from Miller, was recorded October 4, 1888.

The evidence is indefinite as to the date when H. H. Tallmadge first showed Miller's deed to his wife, because she, the only witness to this fact who was examined in this cause, would not make it definite; but, the evidence tends strongly to show that it was on the 4th October, 1888, after she had a conference with Mr. Duhamel at his office, and went home and conferred with her husband. She then knew that Miller's heirs had sold the land to Kirby. Tallmadge had been absent from Washington, and when he returned and found Kirby's deed on record, he knew that his quarry had escaped, and he fell back on the deed to his wife, to save himself; unlocked his box, handed the deed to her, for the first time, *and told her to have it recorded.*

For the first time, she became her own agent, and was independent of his assistance.

Afterwards, on 12th March, 1889, Tallmadge paid $120 interest on the four notes of $1,000 each, and Bates recovered the lost art of writing his receipt in a proper way, thus:

U. S. PATENT OFFICE,
WASHINGTON, D. C., March 12, 1889.

Received of Henry H. Tallmadge, Esq., one hundred and twenty dollars ($120) (check) in payment of interest due this day on four notes of $1,000 each, *drawn* by J. L. Miller, secured by deed of trust.

HENRY H. BATES.

The "loan" and Mrs. Miller's "trust" and the liability of Miller's estate had all disappeared from the minds of these contrivers of deceit, and the transaction came out in the clear light of *a debt due to Bates from H. H. Tallmadge* who had assumed to pay notes for $4,000, that were "*drawn*" by J. L. Miller and secured by his deed of trust. Long before that date, Kirby had offered to lift Bailey's incumbrance on these lots, by paying the whole debt, and he refused to receive it. There is a hidden fraud in this transaction that only became possible of execution when Miller died. It is clear that the purpose was to defraud his estate, and it matters little how this was to be done, whether by permitting his estate to pay the four notes of $1,000 each, or whether the whole debt of $12,200 was his and was all paid except $4,000; or whether H. H. Tallmadge was endeavoring to overreach his wife by withholding the deed from her; or whether he held that deed as an escrow, to be delivered when Miller was released from all his notes and mortgages.

28. In any possible phase of the case, as it is presented in the testimony, it is so clouded with fraudulent concealment, and with contradictions and just suspicions, that a court of equity cannot undertake to enforce any claim that is based upon it. The three depositions of Lewis C. Tallmadge, considered together, lead to the conclusion that, in this transaction, which sets at defiance every ordinary business principle and practice, John L. Miller's estate is to be the victim of a conspiracy to rob it, that a court of equity is now asked to execute by declaring a trust, in favor of Mrs. Tallmadge, on these lots.

LAW POINTS AND AUTHORITIES.

1. Every transaction in reference to the purchase of these lots based on an alleged verbal agreement of Miller's that he purchased or would purchased the same with Mrs. Tallmadge's money and hold the title for her, that was prior to Miller's deed to her, is void under the statute of frauds.

Williams *vs.* Morris, 5 Otto., 444.

2. Those dealings and agreements, prior to said deed, if they had any effect on the title, are merged in that conveyance, which places Mrs. Tallmadge in the position of holding a deed reciting a consideration of $11,900, with full covenants of warranty.

If there were trusts between her and Miller prior to that deed they were executed fully when that deed was delivered to her, if it was ever delivered.

3. These alleged trusts are of no avail to show that Miller held the title Bates conferred upon him as the agent of Mrs. Tallmadge before he conveyed the land to her.

The warranty of title, the recital of a full consideration for the sale, the conveyance in fee, with warranty also of possession and the assumption by Miller of the duty of removing the mortgage he had placed on the lots to secure the residue of the purchase money, are facts so utterly repugnant to the duties and obligations that arise out of the ordinary relations of principal and agent, that their acceptance by Mrs. Tallmadge constitutes her in law and in fact *the vendee of Miller from the date of the deed.*

4. In Preston *vs.* Tremble, 7 Cranch, 354, Chief Justice Marshall disposed of this entire case as it is stated in the bill, on the doctrine of the merger of an equitable claim in a subsequent legal grant, although the grant was void.

"The bill stated that Preston, the complainant, had title to a tract of land, but the defendant fraudulently and deceitfully entered into it, and holds him out.

"That Dunlop entered the land in due form, under the laws of North Carolina, and paid the entry money to the state and performed every other requisite to complete the contract. He never received back the purchase money, nor consented to annul the contract. North Carolina enacted a law declariug such entries null and void. The bill alleges that the law of North Carolina rescinding the contract was void. That Dunlop afterwards obtained a patent therefor from the state of North Carolina and afterwards conveyed the land to John Rhea, who conveyed to Preston, the plaintiff.

"Here was a clear legal title in the plaintiff, if the act of the legislature of North Carolina, rescinding the original entry was void, and if the defendant, Tremble, 'fraudulently and deceitfully entered into it and holds him (Preston) out.'"

The question was whether the bill contained equity.

Marshall, C. J.

"If your title is good at law, you have no case in equity. If you have any title it is at law. If you have no title at law, you can have none in equity. The equitable estate is merged in the grant. This is an attempt to substitute a bill in equity for an action of trespass," and the bill was dismissed.

The case on this appeal is the same in all respects with the case cited, only it is stronger for the appellants in this, that the bill seeks to cut off any possible right of Kirby to assail complainant's legal title, by destroying the conveyances he holds.

All the complainant's alleged equities derived through her dealings with Miller (with which Kirby had no connection,) are merged in Miller's deed to her, which, she alleges in her bill, confers upon her the title to the land.

5. The case of Hipp *vs.* Babin, 19 How., 271, goes still further, and holds that a court of equity can not entertain jurisdiction of a bill founded on a claim of legal title in the complainant,

but will reject it even where the defendant submits to the jurisdiction, without interposing any objection by demurrer or motion to dismiss the bill for want of equity.

This authority disposes of the decree of the lower Court in this case, and answers every point on which the equity jurisdiction could rest. It is followed and supported by many other cases. (See U. S. *vs.* Huckabee, 16 Wall., 436; Parker *vs.* Cotton Co., 2 Black, p. 550; 19 How., 278.) Where the remedy at law is plain, adequate and complete, "*the adverse party has a constitutional right to trial by jury.*"

6. The evidence in support of such a bill as this, if the case is within the jurisdiction of a court of equity, must be "entirely satisfactory," "but if the proofs are doubtful and unsatisfactory * * * * equity will withhold relief upon the ground that the written paper ought to be treated as a full and correct expression of the intent, until the controversy is expressed beyond reasonable controversy.

Ivinson *vs.* Hutton, 98 U. S., p. 82.

7. When the complainant accepted from Miller a deed with covenants of warranty, she agreed to stand upon that as the measure, and as the evidence of her legal rights. That covenant furnishes her with all the indemnity against incumbrances that she can claim. She has no right, therefore, to stop any money or property in the hands of Miller's heirs, though derived from his estate, either to make good to her the warranty, or to prevent them from dealing with what they claim as their own coming from his estate; she has no lien upon or interest in his estate, except as a general creditor if the warranty is broken.

Refeld *vs.* Woodfolk, 22 How., 318.

This point is not raised on the pleadings, as no such allegations are made of a claim by the complainant. But this case shows that where a vendee accepts a deed with covenants of

warranty, he must abide by his contract and can not seek the aid of a court of equity, to prevent the creation of an incumbrance, because it might turn out that the covenantor, or his estate, would not be able to pay the damages. Courts of equity are not to be turned into insurance offices to protect men against the consequences of their contracts.

8. The answers being responsive to the bill so far as they deny its allegations, disprove them, (6 Cranch, 8; 7 Cranch, 79; 13 How., 151; 3 Wheaton, 520,) and are conclusive when not impeached.

9. Where the title to real estate appears of record to have been in an intestate at the time of his decease, and thereafter the property has been conveyed by the heir at law to a *bona fide* purchaser for value, the latter acquires the title, as against a grantee named in an unrecorded deed executed by tne intestate in his lifetime.

Taxes paid upon the common property, or an amount paid to procure a conveyance from one who claims title to the same adversely and under a tax deed, by a tenant in common, cannot be made a charge upon the estate and interest of a co-tenant after such estate and interest have passed into the hands of a purchaser without notice.

Held, that the record of the tax deed and of the conveyance from the grantee therein named would not be notice of such claim.

Welch *vs.* Ketcham, Minn., 51 N. W. Rep., 113.

10. The deed to Kirby, and his deed of trust to Williamson and Willoughby were made nearly six years later than the alleged deed from John L. Miller to Mrs. Tallmadge.

If Miller's deed conveyed to her a title to the lots, in fee simple, as the bill states, neither Miller's heirs nor their assignee could possibly cloud a title that their ancestor had conveyed to

Mrs. Tallmadge, when they claim only by descent from him, as his heirs, and not under any deed or conveyance made by him. A claim of title to land may, if fraudulently set up, be a slander of title, but it can not create a cloud on a good title.

If the title claimed is fraudulent, as this bill is supposed to aver that Kirby's claim is, that averment shows that court of law can, at all times, protect Mrs. Tallmadge against its successful assertion.

If the deed set up by Kirby is a fraud, and a *discovery in equity is not necessary to expose and establish the fraud*, Mrs. Tallmadge, being in possession of the land, (as her bill states,) has no right to ask a court of equity to reach out its arm and destroy Kirby's deed, because he has demanded rent from Mrs. Tallmadge's husband, or because he may bring a real action at law to try the strength of his title, and there insist upon his right to have the question of fraud, on his part, *tried by a jury*.

If the court of equity could have jurisdiction, *quia timet*, or for the perpetuation of testimony, to meet a title that Kirby may set up to support an action to recover the land, it is enough to say, on that point, that the bill is not framed with that view, nor are its allegations sufficient, in any respect, for such relief.

11. The bill deals only with an alleged fraud, presently existing, which it says is capable of being proved, and alleges that it already constitutes a cloud upon Mrs. Tallmadge's title.

Courts of equity cannot thus bring any man within their power, and search out frauds in claims that he has not sued upon, and may never put in suit, and enjoin him from setting them up. They can only do this when the fraud relates to a transaction to which the complainant and defendant are parties. It must also grow out of a relation that tends to impose upon the complainant some obligation that is not binding in equity, or to fix upon his property some dishonest incumbrance.

There are no relations whatever by any agreement, or growing out of any dealing between Mrs. Tallmadge and Mr. Kirby,

except that they claim these lots under different conveyances, and the title of each runs back to the same source, or would, probably, be found to have the same source, *if the bill had described, sufficiently, how John L. Miller became the owner of the land, as it does not.*

But the bill only shows that he obtained the land from some person not named or described in the bill, and that such person holds a mortgage on it.

The cloud is described in a nebulous fashion, but whose *title* it obscures, is left to conjecture by the bill. This vagrant cloud is alleged *in the prayer of the bill* to have been created by Mr. Kirby, as a sort of instrument of Williamson and Willoughby operating, so far as the bill shows, for their advantage and not for his own profit, and yet, paying $3,000 cash, and giving his notes for $9,000 and a mortgage on the property to secure them.

12. In the prayer of the bill, *but not in the statement of facts,* this transaction is claimed to be fraudulent, and the decree of the Court annuls the deed to Kirby; the deed of trust he gave to Williamson and Willoughby, and the notes thereby secured; but the averments of the bill leave Kirby without relief as to the $3,000 he paid for the lots, and it leaves untouched the conveyance from the heirs of John L. Miller to Kirby.

13. Bates, or whoever it may be that yet holds the legal title to the land, is an indispensable party to such a bill. His presence in the cause, as a party, is necessary to the equity of such a bill. He must be in court in order to be informed and directed as to the persons to whom he must look for the payment of the $4,000 and interest yet due on Miller's notes given for the land, whether to H. H. Tallmadge or to Mrs. Tallmadge, Mr. Kirby, Miller's heirs, or Miller's executors. Kirby offered to pay the notes, and Bates refused the money. If that was a lawful tender, no interest is accruing on the $4,000 yet unpaid.

14. The allusion in the bill to covinous practices and conspiracies by Kirby and his alleged attorneys is not in such form, nor does it contain such substance, as a narrative of facts, that the Court could predicate a decree upon it. Besides, every fact so stated, is consistent with lawful and honest action on the part of Kirby. The facts, as stated in the bill, do not create any presumption of fraud against Kirby. It is only in the averment *of the intent of the parties* that any question of fraud is raised. Kirby employed a lawyer to examine the title to the lots before he would purchase them. His report showed a clear title in John L. Miller since September, 1884, as to sub-lot 76, and the legal titles as to lots 77 and 78 in Trusdell & Ashford, trustees, to secure five notes of $1,000 each, the last one due September 12, 1887.

So that Miller had nothing but an equity of redemption in lots 77 and 78 that he could have conveyed to anyone.

15. No statement is made in the bill of Mrs. Tallmadge that Kirby bought these lots from Miller's heirs at an under valuation, so the price must be considered fair and reasonable.

Indeed, $12,000 is a very great price for an equity of redemption in these lots, over which a debt of $4,000 hung as a mortgage incumbrance. Then there was also a question as to whether the personal effects of Miller's estate were to be resorted to, to remove this incumbrance. The widow's dower was also a question which Kirby had to encounter in purchasing these lots. These are important facts that are entirely ignored in the bill of Mrs. Tallmadge, and are especially important because the fraud charged against Kirby, Williamson and Willoughby consists alone in the allegation that they, having knowledge of the conveyance by Miller and wife to Mrs. Tallmadge, attempted to assume the roll of innocent purchasers of the land from Miller's heirs and to place themselves in this attitude with the intent to defeat her rights, because her deed had not been registered.

The probable meaning of the pleader, though obscured by confusing and contradictory allegations, was that Williamson

and Willoughby, while acting as the attorneys of Miller's heir's, acquired knowledge of the fact that Mrs. Tallmadge held a deed to these lots from Miller which had not been recorded, and to deprive her of her just rights they procured Kirby to assume the relation of innocent purchaser of the property.

If the law is that actual notice of a conveyance is equivalent to registration, such a plan as is described in the bill, to defraud Mrs. Tallmadge, could only be carried into effect by perjury, in denying such notice. The bill charges such actual notice, and this, added to the $3,000 cash paid by Kirby for the lots, and the three notes for $3,000 each that Kirby gave for the land, show an enormous risk on Kirby's part, to help out the scheme of Williamson and Willoughby to defraud Mrs. Tallmadge.

16. Allegations of fraudulent dealings that could never become dangerous to Mrs. Tallmadge's interests, except through the perjury of three men, should be so made that *the facts would be set forth in clear and issuable form.* But in this bill no facts are stated that establish a conspiracy to commit such a crime. On the contrary, the facts *as stated* show that Kirby, Williamson and Willoughby *believe that the non-registration of the deed of Miller to Mrs. Tallmadge,* (with which they had nothing to do,) *was a fatal defect in her title, as against anyone, even with notice of the deed to her, who should obtain a deed from the heirs of Miller, on a purchase of their interests at a fair price. Such a belief is a full answer to the allegations of a conspiracy to defraud Mrs. Tallmadge,* even if Kirby knew of the existence of the unrecorded deed to her.

Then, a conspiracy to defraud her is utterly repugnant to the statements in the bill of the "scheme to defraud and cheat the complainant which is that, under the device or pretense of a *bona-fide* purchaser, or holders of negotiable notes, to be given by such pretended purchasers, and negotiated and discounted by such persons as they might be able to dispose of them to, and the said Kirby was brought into such conspiracy to play the part of such pretended purchaser and to give said notes."

17. There is no pretense in the bill that Kirby is not a solvent and responsible man and fully able to pay $12,000, yet the bill states that his notes were "to be given by such pretended purchaser, *and negotiated and discounted by such persons as they* (the conspirators) *might be able to dispose of them to.*" That agreement being stated as a part of the "conspiracy" destroys the idea of its criminality, for the reason that no sane and solvent man would give his notes, under such circumstances, for $12,000, when they were to be negotiated and discounted by other persons as commercial paper, all for the mere advantage of his co-conspirators. Whatever might happen to others engaged in such a "conspiracy," Kirby was to be liable, at all events, to the holders of his notes for $9,000, for which he was to get nothing, for the bill does not show, or aver, that he could have derived any profit ly lending himself, as a tool, to his co-conspirators to cheat and defraud Mrs. Tallmadge.

If Kirby was so used by them, his deed and notes might be annulled on the ground that he was *non compos mentis*, but not on the absurd ground that he would defraud himself in order to help Williamson and Willoughby to defraud Mrs. Tallmadge.

18. This repugnance of statement in the bill, as to the essential facts attending the execution of the alleged conspiracy, is still more conspicuous in section thirteen of the bill. The bill states in that section that Williamson and Willoughby knew of the existence of the deed from Miller to Mrs. Tallmadge, and then in order to show the state of Kirby's knowledge on that point and, to rest his intention to cheat and defraud Mrs. Tallmadge on the indispensable fact that he also knew of Mrs. Tallmadge's title to the property, thus describes his knowledge and the sources of it: "And she further says that said Kirby well knew that she was the owner of the property, and that his grantors had no title, and that the said John L. Miller had conveyed the property in his lifetime." That statement is clear and full to the point that Kirby knew the state of the title when he purchased the lots from the heirs of John L. Miller. The bill

then proceeds: "And (he) was careful *to avoid all possible sources of information, and took no steps to ascertain the indebtedness of the said John L. Miller* from his executor, or what was due on the notes from (to) Bates, the holder thereof, *nor did he approach the widow as to her dower, any one of whom would necessarily have told him that said Miller had conveyed the property to complainant.*" It is a queer allegation of fraud, that Kirby, whose actual knowledge of the state of the title was thus alleged to be perfect, omitted to apply to the executor or widow of Miller, or to Bates, the holder of Miller's notes, to gain from them information that Miller had conveyed the lots to Mrs. Tallmadge. If either of these statements is true, the other is not, and no allegation of fraud can be predicated of two statements of facts so contradictory.

The same section of the bill proceeds to show how impossible it was that Kirby had the knowledge of the conveyance to Miller from Mrs. Tallmadge, without which he could not possibly have been guilty of any fraud against her, as follows: "*And he never examined the premises, or approached the houee, or made any inquiry as to who occupied the house, add what relation the complainant bore to the same as tenant or otherwise; complainant says he well knew that such inquiry would have fastened upon him a full knowledge, and he studiously avoided such sources of information, as he would have been making evidence to rebut the pretended bona fide purchase by him. And he made no such investigations and inquiry as any ordinarily prudent person would have made, who was contemplating making a bona fide pvrchase of such property.*"

Section fourteen further shows that Kirby's knowledge of the state of the title was derived from and confined to the history of the title, as shown on the public records and set forth in the abstract of title reported to him by his attorney.

The paragraphs last above quoted from section thirteen of the bill show, conclusively, that the allegation of fraud and conspiracy to cheat, that is made the sole ground for setting aside Kirby's deeds and the cancellation of his dealings respecting these lots,

is not based upon *his actual knowledge* of the conveyance from Miller to Mrs. Tallmadge, *but upon the statement that he could have acquired such knowledge by making proper inquiry.* To set aside such a transaction upon such a state of facts, and to annul deeds executed upon a good consideration, is to saddle any man who purchases and pays for a tract of land that is claimed by another, with a fraudulent intent, unless he can show that he made search for outstanding deeds and incumbrances that are not recorded upon the public records.

The registration laws are of no effect if such a duty rests upon purchasers of land, and if the omission to make the search is to be considered a fraud in fact or in law.

19. If Mr. Kirby chose to pay his money and give his notes for this land to persons claiming to own the same, he could not possibly defraud or cheat Mrs. Tallmadge by taking the risk of his getting a title to lots claimed by her.

She had violated the policy of the law in neglecting and refusing to have her deed from Miller recorded. The fault was her's, and not Kirby's, that her laches had caused him to pay $3,000 cash, and give his notes for $9,000 for the lots she afterwards claimed under an unrecorded deed. How it is possible that an actual purchase of the lots by Kirby could defraud Mrs. Tallmadge, it is not possible to conceive.

20. The theory of the bill appears to be that the entire transaction between all concerned in the sale by Miller's heirs to Kirby was merely simulated. But the bill does not so state the facts. It does not deny the giving of the three notes for $3,000 each, or the actual payment of the $3,000 in money by Kirby to some person for Miller's heirs. It says that "any money or notes that may have passed, or pretended to have been passed, *were all delivered* to said Williamson and Willoughby, or to both of them, or some other person to hold the same, and that any consideration that may have been pretended to have been passed

to the grantors yet remains to be distributed among the defendants, and that said Kirby, Williamson and Willoughby would not trust their co-defendants, who are financially irresponsible, with their shares, until they felt themselves secure from liability, or molestation, with the fruits of their conspiracy."

This remarkably vague and uncertain statement may be, as grammatically, a statement of mere opinions, as it is of facts put in issue in the case. Taking it, however, as a statement of facts, and helping it out with very indulgent inferences, instead making intendments against the pleader, it shows that the notes were given and the money paid by Kirby into the hands of somebody "until they (Kirby, Williamson and Willoughby) felt themselves secure from liability or molestation with the fruits of their conspiracy," then "to be distributed among the defendants." The inquiry is unavoidable, *what defendants* are to get the "fruits of their conspiracy," and what is to be the share of each? Kirby is to pay for the land $12,000 at least. Does the bill state that he is to receive back any part of the purchase money? How much are Williamson and Willoughby to get from Miller's heirs for their share in the transaction? Who is to prevent Miller's heirs from collecting Kirby's notes under the deed of trust from Kirby to Williamson and Willoughby?

These and other necessary inferences and express statements in section fourteen of the original bill show that the land was sold to Kirby by Miller's heirs, the $3,000 was paid by him, and three notes of $3,000 each were actually executed and delivered to somebody to complete the transaction. So the transaction was not merely simulated or pretended, *but was real* whether it was honest or dishonest.

21. If the transaction was real, legal rights and consequences have supervened, as between the parties, that Mrs. Tallmadge is not concerned with, and she has no right or standing in court to ask for their correction.

If they are fraudulent, they cannot be in the way of her title in any court. If they are fair and just, they are lawful muni-

ments of title to Kirby that no court can lawfully destroy, so that in either aspect, the court of equity is without power to give the remedy.

22. *But aside from this question of jurisdiction, what is Mrs. Tallmadge's attitude with respect to the title of these lots?* This is ascertained by the statements of the bill.

The bill in section two, shows that the title to lots 77 and 78 was not in John L. Miller when his deed to complainant bears date, but in trustees, who are not named in the bill but are named in a record which is referred to. These lots are still heavily incumbered by this trust deed, but the amount of it, or the person who now owns the notes is not named in the bill.

It was thought to be necessary by the pleader, in this state of the title, to show something more than possession by Mrs. Tallmadge under an unrecorded deed from Miller, to constitute a notice of her claim under *color* of title that would dispense with the requirement of the statute that the deed should be recorded. To show this sort of relation to the title, the bill avers that "complainant *purchased* the two lots * * * * and *advanced* the purchase money for the same unto one John L. Miller, who took the title to himself in fee simple, which was duly recorded." This arrangement is not evidenced by any writing, but to the reverse, is contradicted by the only written papers that were executed as setting forth the agreement.

On this statement, the law is that Mrs. Tallmadge had no interest in the lots, except a lien for purchase money, or a secret trust for that sum, *advanced* by her to Miller. Miller gave his notes and a deed of trust on the lots to secure them for the unpaid purchase money, and Mrs. Tallmadge did not bind herself for anything; she is not now bound to pay the four notes of $1,000 each, given by Miller, and are still unpaid.

23. Admitting, for argument sake, that all this transaction was lawful and in good faith, if Miller was left, as he was, and his estate still is, bound for the unpaid notes, and *if his estate*

pays them, would that fact aside from his deed *vest the title* in Mrs. Tallmadge? It is very clear that it would not be so vested in her, and equally clear that no court of equity would vest the title in her, against the objection of those who are entitled to his estate.

They could plead that the private agreement is void under the statute of frauds, as well as that it expressly contradicts the written agreement made at the same time, which vested the title in fee simple in Miller.

This trust, or equity, or lien for purchase money, or whatever it is in law, can not help out the claim of Mrs. Tallmadge, that she gave notice of her title to the land by being in the possession of it under color of title. That claim rests, now, solely upon the deed to her.

All that part of the complaint is of no value in support of her claim. When the husband and wife occupy land, the title to which she holds under an unregistered deed, of which a *bona fide* purchaser has no actual notice, the possession is, by intendment of law, and for the purposes of such notice referred to the husband as the head of the family.

24. Mrs. Tallmadge does not come into court in this case as *an innocent party*, for the reason that her statement as to the purchase of the property is incredible, on its face. She states no fact to make it probable or credible that Miller, who is dead and can make no explanation or contradiction of her claim, should have purchased these lots for her; should have taken the deed in his own name; should have conveyed it in trust to secure $5,000 of his own notes for purchase money; should have received from her, as an "advance," the cash payment made on the lots, and should not have given her any receipt for the money, or should have taken no obligation from her to pay the money on the notes as they would fall due, or should not, at the time, have given her an obligation to convey the land to her when she paid the notes.

Creath *vs.* Sims, 5 How., 192.
Wheeler *vs.* Sage, 1 Wall., 518.
Providence Rubber Co. *vs.* Goodyear, 9 Wall., 788.

25. The facts, as stated in the bill, would not give a court of equity jurisdiction to fasten a trust or lien on these lots, in favor of Mrs. Tallmadge, nor would a court of equity decree such a trust, or lien, if it was clearly established by parole evidence, for the reason that it is stated so obscurely, and with such reluctance as to details, that the court could not grasp the whole subject and do complete equity in favor of all persons interested.

26. The contradictory and halting manner in which the statements of facts are made and the care with which the truth is economized in sections two and three of the bill throws over Mrs. Tallmadge's title to relief a cloud of just suspicion. The evidence in the case only intensifies the suspicion that the averments in the bill make dark enough, that Miller's deed, if it was ever delivered, was kept in concealment.

On the structure of the bill, as is above shown, Mr. Kirby insists that the court could grant no relief to Mrs. Tallmadge, and the bill should be dismissed and the parties should be left to their full, adequate and complete remedy at law.

The prayer of the bill "that the said deed and deed of trust be declared by this honorable court to be fraudulent and void, and the same be set aside and cancelled," does not identify the deeds made to, and by, Kirby. The decree identifies these deeds in a loose way, and decrees that they be annulled and set aside; but the notes given by Kirby are not cancelled, nor is the money paid for the lots refunded to him, yet the decree nowhere declares that the deeds or the transaction in which they originated are fraudulent.

Kirby, without being convicted of fraud by the decree of the court, is left without adequate remedy to recover his money, and to his defence, if he can make any, against his notes for $9,000, while his deed is destroyed.

The court could not, probably, do any better for Kirby, for the bill only sought to destroy any claim of his to those lots regardless of what other rights of his should be destroyed, and the court could go no further in its decree, lawfully, than the bill goes in its allegations and its prayers for relief. But as no fraud was found by the court in Kirby's dealings, he was entitled to a decree returning his money to him and canceling his notes, which it was impossible for the court to grant him on the pleadings in this cause.

27. When Mrs. Tallmadge found it necessary to come into a court of equity for a decree that would make her alleged legal title to those lots perfect against an adverse holder, she was bound to submit also to the court the facts and prayers that would enable the court to protect Kirby if it should turn out that he had not outlawed himself by some fraud he had attempted to perpetrate.

28. On the answers and proofs in this case it has turned out, beyond dispute, that Kirby is an innocent purchaser for valuable and full consideration. Then, assuming that she and Kirby are equally innocent, and that both have paid money for the same property, and, if any one is at fault it is the heirs of John L. Miller in selling the lots to Kirby; the heirs of Miller should have been compelled, in this suit, to pay the money into the registry of the court and to depcsit the notes and deed of trust given by Kirby, and they should have been compelled to litigate with Mrs. Tallmadge the question whether their ancestor, John L. Miller, had conveyed the property to her in good faith and for a consideration honest and valuable in law, and whether she had, in fact, obtained a deed from him by actual delivery, or in some surreptitious manner, as they insist was the fact in their answers.

29. When all the parties are before the court Mrs. Tallmadge can not, while claiming such relief, evade the issue presented in

her bill, and in all the answers, as to whether she dealt lawfully and in good faith in obtaining possession of a deed to the lots from John L. Miller. This defense went to the root of this title, and, when it was set up in the answers, something more than possession of the deed was necessary to prove its delivery as a conveyance.

Morgan *vs.* Chicago Railroad Co., 96 U. S., 716.

The testimony of Mrs. Tallmadge and her brother-in-law on this subject, is evidently evasive, uncertain, contradictory, and incredible, when tested by the experience of intelligent people in their business affairs.

30. Less motive, or reason, was never stated for any transaction than is shown for the alleged conduct of Miller, in exposing himself and his business credit to an obligation of $5,000, to continue for five years, with interest at 6 per cent., for the mere accommodation of a married woman, without including her husband, or even consulting him, when he, also, is shown to be a competent business man. It is simply incredible, in the light of human experience, that all this should have been done by Miller without any memorandum in writing to indicate the purpose of the transaction, or even a witness that ever heard Miller say a word about it.

The first informal agreement of Bates with Tallmadge to sell the property should have been produced, and the refunding to Miller of the $100 given by the husband to Bates to bind the bargain, should have been explained; but nothing is offered in that direction. This is the only paper in the possession of the Tallmadge's that is known to exist, that is withheld from this record. It must reflect light on the transaction. Why is it withheld? Why is it not accounted for?

31. Then the withholding of Miller's deed to Mrs. Tallmadge from the record until he had died, and until his heirs had filed a bill to partition his real estate and to charge the unpaid debt

to Bates upon the personal estate, and afterwards until Kirby had bought the lots, is strongly indicative of fraud. There was something more than a locked box, the key to which was held by the husband, who had not been entrusted with any connection with the deal, and something more than the forgetfulness of the husband and the wife, as to registering the deed, to account for the omission.

32. Upon the evidence, aside from the denials in the answers of every material allegation in the bill and the specific answers to the interrogatories in the amended bill, the claim to an equitable title to these lots in the complainant, and the charge of fraud against Kirby, or of any actual notice of any claim by the complainant, on his part, is overturned by the weight of the testimony taken before the Examiner.

The defendants in this case had no need of any other evidence than their sworn answers to the bill and their answers to interrogatories in the amended bill to disprove every material statement and averment in the original bill. Their defense is complete, under the chancery law, on the bill and answers, and the reply of the defendants to interrogatories propounded to them. The complainant and her brothers-in-law are the only witnesses offered to prove that Miller had stultified himself by the purchase of these lots for the complainant, by giving his notes for the purchase money, and then giving her a deed reciting a cash payment of $11,900 made by her, with full covenants of warranty, and still leaving his notes in the hands of Bates for $5,000.

If Bates sells the land she would be entitled to recover from Miller's estate, on his covenants of warranty, $12,900, but for her confession that Miller was merely her agent in buying it.

33. It is a very remarkable transaction, as it is stated in the bill, and still more peculiar as it is stated in the testimony of Lewis C. Tallmadge and the complainant.

The husband is left out of the record, as a witness, and only

appears to be connected with the transaction on one occasion, when Bates says he sold the lots to him, and then, as the keeper of the key to the locked box where the deed was kept so long, and as a distant observer of the careless generosity of his brother in lending his wife $5,000 to pay for the lots, without a note, or any memorandum, with no stipulation as to the time of its repayment, and no security of any kind for the loan.

Another instance would be very difficult to find where a lady would have a father to give her money and stocks as she needed them, and a brother-in-law to lend her $5,000 at a time to buy real estate, and a friend like Miller to give his notes and mortgage for another $5,000, all for her accommodation, and a friend like Eddy to sell her stocks and ship her over $7,000 by express, and to receive back $5,000 of it, sent also by express, from Washington, and to pay it to her brother-in-law; and a friend like Mr. Carey, of New York, to send on his check to pay other notes for the Claggett lots; and with a husband to look on in mute silence while these things were being done; and the confidence of all these people in each other so complete and profound that no scratch of a pen recorded a single fact in all these business transactions.

The laws have been such since the reign of Charles II, in England, and in the United States that when such dealings related to land they are declared fraudulent and void.

34. The mere possession of land, under a deed which is set up as a good and perfect title at law, is not a sufficient ground to give a court of equity jurisdiction to enjoin an adverse claimant from proceeding in a court of law to assert title to the land, and to declare a deed to him void, and to annul it as a muniment of title. It requires additional facts, which show that the law court can not give full, adequate and complete relief to the complainant, which call into action some part of the exclusive jurisdiction of courts of chancery, before that power can be exerted.

Fenn *vs.* Holme, 21 How., 481.
Oelricks *vs.* Spain, 15 Wall., 211.
Thompson *vs.* Allen County, 115 U. S. Rep., p. 555.
Gaines *vs.* Nickolson, 9 How., 356.
Hipp *vs.* Babin, 19 How., p. 278.

35. The deed to Mrs. Tallmadge, if it was ever delivered to her, is not shown to have been so delivered, by Miller, or in his lifetime. The evidence shows that she never saw it, in Miller's lifetime. There is no proof of its delivery, except the certificate of the Notary. That certificate is shown to be false, as to the separate examination of Miller's wife. She is the witness of the complainant and she swears that she signed the deed because her husband directed her to sign it.

Such an examination was of no effect, and the deed was void as to her. It was a joint deed and there could not have been a delivery of it as to one of the grantors.

Hepburn *vs.* Dubois, 12 Pet., 345.

36. At common law a deed was valid without registration.

Clarke *vs.* White, 12 Pet., 178.

The act of 29th April, 1878, totally changed this rule of law as to creditors subsequent, and *bona fide* purchasers without notice of the unregistered deed, which was operative, as to them, only from the registration.

The registration thus became an essential element in the conveyance, as to them. They were excepted out of the sphere of its validity and could only be bound to accept it, or treat it as a conveyance, when they had notice of its existence.

Greenleaf *vs.* Birth, 9 Pet., 292.
Patterson *vs.* De La Ronde, 8 Wall., 292.
Brown *vs.* Jackson, 3 Wheat., 218.
Hitz *vs.* Metropolitan Bank, 111 U. S., 729.
Mills *vs.* Smith, 8 Wall., 27.

37. In order to escape the force of the statute of 29th April, 1878, the complainant, in her bill, alleges that Kirby had actual notice of the deed of Miller to her, before he bought the lots of land. All the statements and averments of the bill on this subject are denied by the answer of Kirby, and he and all of his co-defendants, in their answers to interrogatories propounded to them by the complainant, again deny those averments and statements, and give a full and complete history of the whole transaction which utterly disproves the bill.

These statements are also supported by reason and truth gathered from the history of the transaction and the attendant circumstances, which completely answer and refute the allegations and charges in the bill.

38. The neglect to record the deed of Miller to Mrs. Tallmadge was not the result of carelessness, or forgetfulness. It was the sort of laches that is inspired by caution and incited by fraud, to hide the facts from those who were entitled to know them—the heirs and executor of Miller—for some purpose, it matters not what purpose, to the serious detriment of Miller's estate and those entitled to it.

39. Equity always refuses to interfere where there has been gross laches in the prosecution of rights.

20 Wall, 14; 2 Black, 545.

There must be conscience, good faith, and reasonable diligence to call into action the powers of the court.

40. The money decree in favor of Kirby, against Richard H. Miller, for $3,000, is without any warrant in the pleadings, or any support in the testimony, and should be annulled.

It subjects him to a recovery, without a hearing, and gives Kirby a judgment for which he has not asked.

Secrecy in making a contract, or sale, or in the creation of a trust, is a badge of fraud.

Warner *vs.* Norton, 20 How., 448.

Circumstantial evidence of fraud is often of more force than direct testimony, because fraud always seeks concealment, and one who is, knowingly, a party to a fraud is, to a degree impeached by its disgrace.

Kemper *vs.* Churchill, 8 Wall., 532.
Gregg *vs.* Sayre, 8 Pet., 244.

A group of circumstances that are inconclusive, when taken singly, are often conclusive proof of fraud when their joint operations are considered together.

Castle *vs.* Bullard, 23 How., 172.

In cases like the present, the burden of proof is on the wife to show that the lots were paid for out of her separate property. She must prove the statement in her bill that "the whole of the purchase money was advanced (to Miller?) *by or for her* and obtained *by her* in no way from (and not by gift or conveyance from) her husband." It may be said that this curious statement is difficult of proof. It was even more difficult of being constructed in this evasive way "by her, or for her," in a bill that is sworn to. It is also very difficult to select the alternative thus presented, whether she "advanced" the money to purchase the land, or, whether it was advanced "for her" by Miller, or her husband. As Miller visited her house "every day," and as she had unlimited confidence in him, and as he transacted all her business while he lived, and she did all of it, after he died, and as they were not related by blood or marriage, and Miller was paid nothing for his services, and, as he was a billiard saloon keeper and was far from being rich, it is quite as probable that

he advanced the money *"for her"* and took deeds to himself for his security, as that Lewis C. Tallmadge "advanced" the money to her "or for her" without security, or a note, or even a promise that it should be refunded, or any time fixed when the money he "advanced" was to be repaid.

All this curious medley of evasive statement, and of improbable, uncertain, conflicting and irrational depositions, needs to be explained, clearly and beyond doubt, by Mrs. Tallmadge and her husband. She quails and staggers under the burden he has cruelly laid upon her, while he stalks away into the dark, and hides himself from the inspection of the Court. People in such circumstances, when they make explanations, must "make a clean breast of it."

The onus is upon them to prove fair dealing when the facts disclosed create a doubt of the integrity of the transaction.

Clements *vs.* Nicholson, 6 Wall., 299.
Callan *vs.* Stathan, 23 How., 477.
Cathcart *vs.* Robinson, 5 Pet., 264.

It was Miller's money, and not money "advanced" to him that was paid to Bates in September, 1882. On pp. 89 and 90 of the Record, Bates proves that Miller paid him in cash, and overpaid him $100, that had been previously paid him "to bind the bargain" by H. H. Tallmadge. This was paid back, "and he took his receipt." L. C. Tallmadge first stated the date of the check on Chicago for $5,000, that he gave to Miller was 6th September, 1883. At a later day he changed this date to 8th September, 1882. The mistake, if it was such, does not alter the fact, (if the money was ever realized by Miller on the check,) that it was not "advanced" by Mrs. Tallmadge, but was *repaid* to Miller. Miller endorsed the check to Miller & Jones, his business firm, and they endorsed it in blank; *non constat*, it may have been delivered back to the owner, or to H. H. Tallmadge.

This check was never in the hands of Mrs. Tallmadge, nor is

there any evidence that it was ever paid to Miller. L. C. Tallmadge says, on p. 47 of the Record, that he *supposes* it was paid to him. "It was paid through the bank; I know his endorsement." It is dated at Chicago, at a time when L. C. Tallmadge was in Washington. Why was Miller & Jones' name used to endorse this check? is a question that needs to be explained. In law, they must have been the owners of it when they endorsed it. The check, evidently, went to Miller's credit with his firm, to repay the $5,000 he had paid to Bates, or some other debt of Miller, to Miller & Jones. The evidence places this whole transaction in a suspicious light. The witnesses for the complainant evince all the reluctance, hesitancy, and make contradictions, corrected statements and refusals to answer questions, such as usually characterize those who invent patches of apparent truth to conceal falsehood, and they present a story that is incredible in all its surrounding circumstances. To account for her ability to raise nearly $9,000, in principal, interest and money to bind the bargain, that was paid on these lots, to Bates and to Claggett, Mrs. Miller states her resources.

She had no money, but had some telephone stocks; what stocks or in what amount is not disclosed. Her father, who was poor, let her have money from time to time, but when, or in what sums, is not stated. She got no money from Miller, or her husband. She sold stocks through Eddy, who lived in Chicago, where L. C. Tallmadge lived. He shipped the $7,000 to Washington, and she shipped it back to Chicago ($5,000) to pay the debt and interest, at 8 per cent., to L. C. Tallmadge, who was Eddy's brother-in-law, and her brother-in-law, and was in Eddy's office every day. She sent the money to Eddy because she did not know L. C. Tallmadge's address. She sold stocks in New York and placed $1,200 in the hands of a lawyer, and H. H. Tallmadge sent the lawyer's check to Bates to pay the first instalment of $1,000 on the debt of $5,000. Now, it cannot comporte with fair dealing, honesty, ordinary prudence, human experience, or the truth, that there was never a word written by anyone to connect Mrs. Tallmadge with any part of these numer-

ous and varied transactions, if she, who was the object of so much kindly solicitude, was the sole beneficiary of Miller's dealing in these lots. Until Miller's mysterious deed got into the hands of her husband, there was absolutely nothing, in writing, nor is there any oral agreement, or admission, of Miller, Bates, Claggett, Ashford or Truesdell, or of any other person, to connect Mrs. Tallmadge with the sales of these lots, or the title to them. Kirby and Miller's heirs and executor could not furnish any evidence to explain this curious situation, and the complainant has utterly failed to make any explanation.

JOHN T. MORGAN,
Attorney for Appellants.

NOV 16 1895
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CLERK

Supreme Court of the United States.

No. 96.

WILLIAM WALLACE KIRBY ET ALS., APPELLANTS,

vs.

MARIA E. TALLMADGE, APPELLEE.

BRIEF FOR APPELLANTS BY COUNSEL FOR HEIRS OF JOHN L. MILLER.

W. WILLOUGHBY,
Counsel for Self and Elizabeth M. Houchens.
L. CABELL WILLIAMSON,
Counsel for Self and Ellen A. Goudy and Richard H. Miller.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

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BRIEF FOR APPELLANTS BY COUNSEL FOR HEIRS OF JOHN L. MILLER.

I.

We adopt the brief and argument filed by Hon. John T. Morgan, as counsel for all the appellants, but in behalf of ourselves and the parties whom we specially represent we desire to file this additional brief.

II.

In the ninth paragraph of the bill of complaint (p. 3) it is alleged that "said defendants," having learned that Miller had no title at his death, proceeded to devise a scheme to defraud the complainant and avail themselves of the property.

As to this we desire to say this much personally:

At the hearing in both courts below, at special and gen-

eral term, it was expressly disclaimed that it was intended to charge any fraudulent connection on our part with what is called this "scheme." Our answers, which are uncontradicted, show conclusively that any connection with such scheme would have been impossible. (See pp. 9, 10, 27, and 28.)

As to the other defendants, they all deny positively any intent to defraud, and no facts can be reasonably contended to be shown to establish such fraud, and we deny all fraud on their part; but whether there was any fraud on their part or not, it is not possible to see how any fraud with which Kirby was not connected could be material to the issues involved.

III.

The material questions, as we understand them, are:

First. Does the complainant show such right or interest in the land as would sustain his claim to relief?

Second. Was Kirby a purchaser for valuable consideration without notice which would give him the protection of section 447, R. S. D. C., which is as follows, to wit:

"SEC. 447. All deeds of trust and mortgages, whenever delivered to the recorder of deeds for record, and all other conveyances, covenants, agreements, and deeds which shall not be acknowledged, proved, or certified and delivered to the recorder for record within six months after the sealing and delivery thereof shall take effect and be valid as to all subsequent purchasers for valuable consideration without notice and as to all creditors from the time when such deed of trust or mortgage or other conveyance, covenant, agreement, or deed shall have been so acknowledged, proved, or certified and delivered to the recorder for record, and from that time only."

IV.

The first question has been so thoroughly discussed by counsel for Kirby in his brief that we propose to confine ourselves mainly to the second.

The contention of counsel for complainant in the court below was that Kirby was not such purchaser for two reasons:

First. That there was at the time of the purchase a pending suit in which the widow of Miller had disclosed a former sale by Miller; and

Second. That the occupation of the property by complainant at the time was sufficient to require him to make further inquiry.

As to the statement of Mrs. Miller in such suit as to a sale, it is sufficient to say that it did not actually come to the knowledge of Kirby (p. 13, par. 7), and there was nothing whatever to direct attention to it, and there can be no grounds for saying that a purchaser is bound to look at all the papers on file in pending suits of which he has no notice. The security of titles would be very much impaired if it should be held that this must be done before property can be safely acquired.

The policy of the registration acts is to impose a *duty* upon persons receiving a conveyance to place it upon record, and if they do not do so a subsequent purchaser without notice can safely acquire title to the property.

In Neslin *vs.* Wells (104 U. S., 428), where there was no such express statute "declaring that the failure to record shall postpone its operation in favor of a subsequent *bona fide* purchaser for value without notice," yet there were acts and customs necessarily implying such obligation on the party receiving such conveyance, the court say: "There

arose a duty on the part of Neslin, the vendor, to record his purchase-money mortgage towards all who might become subsequent purchasers for value in good faith, a breach of which in respect to Kerr, the subsequent mortgagee without notice, constituted such negligence and laches as in equity requires that the loss, which in consequence thereof must fall on one of the two, shall be borne by him by whose fault it was occasioned."

In this case, this general doctrine of the duty devolving upon the party, having a conveyance, to record it, is elaborately discussed and applied to a variety of cases, showing clearly that one in the position of Mrs. Tallmadge is guilty of such laches as to debar her from relief in equity.

These principles are again enlarged upon and affirmed in Blennerhassett *vs.* Sherman, 105 U. S., 100.

The case at bar shows that Mrs. Tallmadge kept her deed nearly six years unrecorded, and did not place it upon record for several months after being informed that the heirs of Mr. Miller were engaged in a partition suit concerning it, during which interval Kirby became the purchaser.

Her negligence was inexcusable, and there can be no reason for construing the law favorably for her.

In Dorie *vs.* Beasely, 75 Va., 190, where the acknowledgment of a deed was held insufficient to allow it to be recorded, though it was actually recorded, it was held, not constructive notice to a *bona fide* purchaser.

See also—

Story's Eq. Juris., sec. 406.

Sugden on Vendors, marg. pp. 984, 987.

V.

But it is contended that the occupation of the premises by Mrs. Tallmadge was alone sufficient to require Kirby to investigate the title in other ways than by record; that he

should have made personal inquiries of her or some other parties.

This was the principal claim urged in the court below.

It must be obvious that the maintenance of such a rule would most seriously impair the security of titles in this District. Probably one-half or more of the buildings in this city are occupied by tenants, or by parties who claim no title, and if purchasers cannot rely upon the records made in pursuance of the registration acts, but must be required to ascertain the right or title of occupants by personal inquiry, then surely no purchaser can be safe without making personal inquiries in all cases, unless he actually receives his deed from the occupant.

VI.

We think that an examination of the authorities will show that, while, where there has been open, notorious possession of such a character as to indicate a claim of ownership or such possession is coupled with acts of ownership, such as building, improvements, or other acts which only an owner would perform, or where there has been a long-continued occupation of many years, and especially of a large tract of farming land, such indicia of ownership have been held to be sufficient to put a purchaser upon inquiry; yet that in the absence of such an occupation as would visibly indicate at least, a claim of ownership, the mere occupation of itself, is not sufficient to require the purchaser to make other inquiry than examination of the records to ascertain who is the real owner.

The cases will also show, that, in order to deprive a person of the benefit of being regarded as a *bona fide* purchaser, such facts must be shown as to constitute an actual fraud on his part, and that to establish such fraud the evidence of it must be, as in all cases of fraud, very clear and strong, and show such a state of things as would *necessarily* show that he has acted in bad faith.

VII.

In 3 Washburne on Real Estate, at page 284, the author says, citing a large number of cases:

"No inference is to be deduced from possession when it is consistent with the possessory title on record. To have it received as equivalent to actual notice it must appear, affirmatively, to have been open, visible, exclusive, and unambiguous, such as is not liable to be misunderstood or misconstrued."

In 1 Story's Eq. Juris., sec. 398, the author says:

"The doctrine is allowed to prevail only where the notice is so clearly proved as to make it *fraudulent* in the purchaser to take and register a conveyance in prejudice to the known title of the other party."

In note to section 400 is cited Chancellor Wigram in Jones *vs.* Smith, 1 Hare R., 43, in which he says, among other things:

"If, in short, there is not actual notice that the property is in some way affected and no *fraudulent turning* away from a knowledge of the facts, which the *res gestæ* would suggest to a prudent mind, if mere want of caution, as distinguished from *fraudulent* or willful blindness, is all that can be imputed to the purchaser, then the doctrine of constructive notice *will not* apply; then the purchaser will in equity be considered, as in fact he is, a *bona fide* purchaser without notice."

In 4th Kent's Com., 8th ed., p. 179, the author says:

"The doctrine of notice and its operation in favor of the prior unregistered deed or mortgage equally applies, however, as I apprehend, throughout the United States, and it everywhere turns on a question of fraud and on the evidence requisite to infer it. * * * Implied notice must not be that notice which is barely sufficient to put a party on inquiry. Suspicion of notice is not sufficient. The in-

ference of a *fraudulent intent* affecting the conscience must be founded on clear and strong circumstances in the absence of actual notice. The inference must be *necessary and unquestionable.*"

In Dey *vs.* Dunham, 2 John. Ch., 182, the syllabus is:

"It must be such a notice as *with attending circumstances* will affect the subsequent purchaser with actual fraud. A notice enough merely to put the party on inquiry is not sufficient to break in upon the registry act."

In 2 Sugden on Vendors, marg. p. 987, the author says:

"It is evident that a purchaser may be bound by a judgment or a deed, although not registered; but it is equally clear that it must be satisfactorily proved that the person who registers the subsequent deed must have known exactly the situation of the persons having the prior deed, and, knowing that, registered in order to defraud them of that title he knew at the time was in them. *Apparent fraud or clear and undoubted notice* would be a proper ground of relief; but suspicion of notice, though a strong suspicion, is not sufficient to justify the court in breaking in upon an act of Parliament. A *lispendens* is not deemed notice for that purpose."

See also Spofford *vs.* Hobbs, 29 Me., 140; Homer *vs.* Griswoll, 8 Greenl., 94.

In Dooley *vs.* Wolcott, 4 Allen, 406, the syllabus is: "Proof of open occupation, possession, and cultivation of land by one who has an unrecorded deed is not sufficient to warrant the inference that a third person has actual notice of such deed."

In Libby *vs.* Leffingwell, 8 Allen, 584, the syllabus is: "Proof of open occupation, possession, and cultivation of land by one who has an unrecorded deed thereof, though not sufficient to warrant the inference that a third party has actual notice of such deed, is competent for the consideration of the jury *in connection with direct evidence that he had such actual notice.*"

In that case the court say that it is "the well-settled construction of the statute requiring actual notice of a prior unregistered deed to invalidate the title of a subsequent purchaser and grantee." The court holds that the *mere* occupation is not sufficient notice, but only that it may be taken *in connection with other direct evidence* that the purchaser had actual notice.

See also the following cases:

Pomeroy *vs.* Stevens, 11 Metcalf, 247.
Mara *vs.* Pierce, 9 Gray, 306.
McMechan *vs.* Griffing, 3 Pick., 149 (15 Am. Dec., 202).
Beatie *vs.* Butler, 21 Mo., 313 (6 Am. Dec., 409; 13 Am. Dec., 250; 64 Am. Dec., 234).

There are many cases which hold, in a general way, that open, notorious, and exclusive possession is sufficient to put a purchaser upon inquiry and sufficient notice of his title, but such cases are generally those which have no reference to registration acts. Some of them are cases where there were manifest and apparent acts of ownership, such as improvements, etc. In Coleman *vs.* Barkelew, 27 N. J. L., 357, the court say that while possession may be constructive notice of the existence of a prior unregistered deed, yet such possession must be manifested by *notorious acts of ownership such as would naturally be observed and known by others.*

See Am. Dec., 696, vol. I, note.

This is not a case in which the court should lay down a general rule upon this subject. The attempt to do so would mislead. The question presented here is one relating to mere occupation alone, where there is nothing to indicate ownership—no act of ownership, no improvement—where all the records show the title in Miller and his heirs. If the rule contended for is applied in this particular case, the effect of it will be most disastrous in this city. To make titles absolutely sure, the purchaser would then be bound to

inquire of every tenant, no matter how clear the record title might be. Suppose that a certain property is called to the attention of a resident of a distant city, he employs an attorney to investigate the title—it may be the Real Estate Title Company—who upon examination of the records reports the title to be good. On the faith of such a report he invests his money. It turns out that the property is occupied by one holding an unrecorded deed. Will the court lay down a rule which would cause such a purchaser to lose his money?

We ask the Court to look simply at the facts in this case without being influenced by decisions or dicta made in cases not identical substantially with this.

Here the purchaser exercised great diligence. He employed a capable lawyer to look up the title. Was it the business of the lawyer to make inquiry as who was the occupant and by what title it was claimed by such occupant? If so, real-estate examiners have duties which we venture to say they do not now know.

VIII.

But in this case the truth is that the complainant did not visibly occupy the premises. The occupation was by her husband. So it would appear to the public, and so in fact it was. All the cases hold that occupation by some other person than the one holding the unrecorded deed is no notice of title of such holder.

See the following cases:

Harris *vs.* Arnold, 1st R. I., 125.
Rogers *vs.* Jones, 8 N. H., 264.
Beatie *vs.* Butler, 21 Mo., 313.
Pomeroy *vs.* Stevens, 11 Metc., 244.
2 Leading Cases in Equity, 122, 162, 180 to 188; 8 Cowen, 266.
Nelson *vs.* Henry, 2 Mackey, 259; 10 Watts, 13–28.

"It would be pushing the doctrine of constructive notice to a degree of extravagance, to hold that the purchaser was bound to know not only the title of the party in possession, but all its derivative sources."

Flagg *vs.* Mann, 2 Sumner, 555, etc.

"Constructive notice of this sort does not extend beyond the title of the party in possession, and the purchaser is not ordinarily bound to know or presumed to have notice of the title under which the party in possession claims or derives his title." (*Id.*)

"Courts of equity in this country where the registration of deeds or matters of title is universally provided for should be admonished not to enlarge the doctrine of constructive notice or to follow all the English cases on this subject." (*Id.*, p. 557.)

In Farnsworth *vs.* Childs, 4 Mass., 640, where the purchaser had actually seen the unrecorded deed, the court say:

"He might well presume from the length of time that the deed had remained unrecorded, either that it was not *bona fide*, or that it had been canceled, or that the estate had been reconveyed, and if the first purchaser suffers, it is owing entirely to his own neglect."

In Fair *vs.* Stevenot, 29 Cal., 486, the court say:

"The possession may be taken and held in such various ways and accompanied by so many qualifying circumstances that each case must depend upon its own peculiar features, and therefore proof of possession is not of itself decisive without regard to the other facts of the case.

"All notices that are not deduced as conclusive presumptions of law arising from a given state of facts are considered to fall within the class of actual notices." (*Id.*, 488.)

In Williamson *vs.* Brown, 15 N. Y., 365, is an elaborate review of the subject, and the last statement of the opinion is:

"I think that the rule is well established that an inference of a fraudulent intent on the part of a junior purchaser or mortgagee must, in the absence of actual notice, be founded on clear and strong circumstances, and that such inference must be necessary and unquestionable."

In Townsend *vs.* Little, 109 U. S., 504, this Court says:

"When possession is relied on as giving constructive notice it must be open and unambiguous and not liable to be misunderstood or misconstrued. It must be sufficiently distinct and unequivocal as to put the purchaser on his guard what makes inquiry a duty is such a visible state of things as is *inconsistent* with a perfect right in him who proposes to sell."

In that case mere physical occupancy was held not to be such possession as to put a purchaser on inquiry and charge him with constructive notice.

In Simmons Creek Coal Co. *vs.* Doran, 142 U. S., 417, this Court says:

"Each case must be governed by its own peculiar circumstances."

In that case the Court found that there had been actual notice by long-continued and notorious possession, accompanied by acts of ownership and other acts found in the case, but the principles applicable in such cases are clearly set forth as we have claimed them to be.

In Story's Eq. Juris., sec. 403, it is stated that one of the grounds of the policy of the registry acts is to avoid the danger of letting in *parol proof of notice* or want of notice of the actual existence of the conveyance. The American doctrine certainly has the advantage of *certainty and universality of application*, and it imposes upon subsequent purchasers a *reasonable degree of diligence only* in examining their titles to estates.

This section is cited and approved in Neslin *vs.* Wells, Fargo & Co., 104 U. S., 428.

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IN THE

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OCTOBER TERM, 1895.

WILLIAM WALLACE KIRBY ET ALS., APPELLANTS,

v.

MARIA E. TALLMADGE, APPELLEE.

No. 96.

Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR THE APPELLEE.

JOHN C. FAY,
Attorney for Appellee.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
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Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR THE APPELLEE.

STATEMENT.

This was a suit instituted by the appellee against the appellants, on the equity side of the Supreme Court of the District of Columbia, to set aside and remove as a cloud upon her title a deed made by the appellants Miller, Houchins and Goudy, claiming to be the heirs at law of one John L. Miller, deceased, dated August 30, 1888, and purporting to convey to the appellant Kirby the property described therein.

The facts as disclosed in the evidence show that in 1882 Mrs. Tallmadge, the appellee, purchased of one H. H. Bates, for a home, lots No. 77 and 78 and improvements thereon, consisting of a substantial brick dwelling, in square 239, for the sum of $10,000, $5,000 of which was paid in cash and the balance, $5,000, to be paid in five instalments of $1,000 each. Instead of having the property conveyed directly to herself, she furnished the money to John L. Miller, a family friend, who paid the cash purchase money with her funds, and at her request took the title in his own name and executed notes for the deferred payments, which he secured by deed of trust on the property. In the following June, 1883, Mr. Miller also purchased, with funds of Mrs. Tallmadge, the adjoining lot, No. 76, taking the title in his own name and executing a trust for the deferred payments, amounting to $1,266. Mrs. Tallmadge took immediate possession of the premises, and has occupied them as her own from that day to the present time, paying interest on incumbrances, taxes, improvements, and reducing the principal $2,266 and holding open and notorious possession under claim of title. Mr. Miller never claimed any right or title to the premises; on the contrary, on the 27th day of December, 1883, by deed of himself and wife, conveyed the legal title to Mrs. Tallmadge. This deed, from inadvertence or otherwise, was not recorded until October 4, 1888.

In February, 1888, Mr. Miller died and by his last will, dated December 1, 1880, devised his entire estate to his widow.

In June, 1888, the defendants Miller, Houchins, and Goudy, collateral heirs of John L. Miller, made a contract with the defendants Williamson and Willoughby to give them 25% of whatever they could get for them out of John L. Miller's estate, and thereupon Williamson and

Willoughby filed a bill in the Supreme Court of the District of Columbia for partition of the property in question and to set off the widow's dower and to charge the personal estate of Miller with the unpaid purchase money of the property. To this bill Mrs. John L. Miller answered that her husband never had any interest in the property in question; that the title to the property was taken in her husband's name as a matter of trust for Mrs. Tallmadge, and that long before his death he had by deed duly conveyed it to her, and that neither she nor his estate had, and never had, any interest in the property. Early in August, 1888, the pendency of this suit coming to the knowledge of Mrs. Tallmadge, she sent the original deed from Miller to her (then unrecorded) by Mr. Tallmadge to Williamson and Willoughby, solicitors for Miller's heirs, who examined and made minutes from it. Instead of discontinuing the suit as Mr. Tallmadge expected, Miller's heirs made (what the appellees contend and what the court below found) a sham sale of the property to the appellant Kirby, a close friend and client of Williamson, who pretended to pay $3,000 cash and gave notes for $9,000, secured on the property, to Williamson and Willoughby as trustees, and secured a deed from Miller, Houchins, and Goudy, and claimed the property as an innocent purchaser without notice of the prior deed. Kirby then gave notice to Mr. Tallmadge that he should demand rent for the property at the rate of $1,000 per annum. He made no effort to obtain the widow's dower, nor did he communicate with her, nor did he visit or inspect the premises to ascertain their condition or who occupied them, or what they rented for, or whether they were in good repair or otherwise.

On receipt of the notice Mrs. Tallmadge filed this bill to cancel and set aside the deed and deed of trust; an-

defendant is an innocent purchaser without notice, "the answer must state that the defendant's vendor was *seized in fee and was in possession at the time of his purchase. And this must not only be averred in the answer*, but the answer setting it up is no evidence against the plaintiff, who is not bound to contradict or rebut it." "It must be established affirmatively by the defendant independently of his oath."

Boone *v.* Chiles, 10 Pet., at 211-212.

The statute that was in force in the District of Columbia at the time of this transaction was—

"All deeds, deeds of trust, mortgages, conveyances, covenants, agreements, or any instrument of writing which by law is entitled to be recorded in the office of the recorder of deeds, shall take effect and be valid, as to creditors and as to subsequent purchasers for valuable consideration, without notice, from the time when such deed, deed of trust, mortgage, conveyance, covenant, agreement, or instrument in writing shall, after having been acknowledged, proved, or certified, as the case may be, be delivered to the recorder of deeds for record, and from that time only; and the recorder of deeds shall note on each deed or other instrument of writing required by law to be recorded, the day and hour of delivery of the same to him to be recorded." (20 Stat. 40.)

The appellee further contends that—

1st. Open, notorious, adverse possession under claim of title was *notice*.

"It is conclusively settled in England that the open and notorious adverse possession is evidence of notice, not of the adverse holding only, but of the title under which the possession is held (Hiern *v.* Mill, 13 Ves. 120; Daniels *v.* Davidson, 16 Ves. 253, per Eldon, Lord Chancellor), and in the United States we deem it to be equally settled.

The cases in New York will be found in Gouverneur *v.* Lynch (2 Paige C. R. 300) and in Grimstone *v.* Carter (3 Paige C. R. 436, per Walworth, chancellor).

"In Kentucky, in Brown *v.* Anderson, 4 Littell, 201; Buck *v.* Hollowaway, 2 G. G. Marshall, 180. Nor are we aware that a contrary doctrine is held in any State in the Union."

Landes *v.* Brant, 10 How., at 375, 376.

The question in the foregoing case was as to whether a party in possession under a prior unrecorded deed could hold against a subsequent legal title derived from the same original source.

The court below instructed the jury that they might infer actual notice of the unrecorded deed from the open and notorious adverse possession, and this instruction was sustained by the Supreme Court.

In Lea *v.* Polk County Copper Company (21 How. 493, at p. 498) Justice Catron says:

"But it is insisted that the deed from Lea to Davis was not registered and fraudulently concealed from the complainant, so that he could not proceed to assert his rights. Davis had possession of the land when he took William Park Lea's deed, claiming for himself and adversely to all others, and he so continued in possession till he sold the land in December, 1852.

"This adverse possession *was in itself notice that he held the land under a title the character of which the complainant was bound to ascertain.*"

In Hughes *v.* The United States (4 Wall., at 236) the court says:

"The patentee cannot complain of the proceedings, for the open, notorious, and exclusive possession of the premises by the parties claiming under Goodbee, when the patentee made his entry and received the patent, was suf-